

FOURTH EDITION

# corrections

the essentials



Written by former practitioners who are experts in the field, *Corrections: The Essentials*, addresses the most important topics in corrections in a brief yet comprehensive format. Authors Mary K. Stohr and Anthony Walsh introduce students to the history and development of correctional institutions while offering a unique perspective on ethics and special populations. The **Fourth Edition** provides insights into the future of corrections, as well as updated coverage of the most important issues impacting the field today.

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MARY K. STOHR | ANTHONY WALSH



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**Fourth Edition**



**Mary K. Stohr:** *To my dad and mom, the late Robert (Stanley) Stohr and Elizabeth (Betty) Stohr. They were so skilled and loving when “correcting” and guiding their own eight children (I was third) that much of what I know about love, forgiveness, and life comes from them. I will be forever grateful for the gift they were as parents. I would also like to dedicate this to my husband, Craig Hemmens, and our daughter, Emily Rose Stohr-Gillmore, for their love and support; I could do nothing well without them.*

**Anthony Walsh:** *To my drop-dead gorgeous wife, Grace; my sons, Robert and Michael; my stepdaughters, Heidi and Kasey; my grandchildren, Robbie, Ryan, Mikey, Randy, Christopher, Ashlyn, Morgan, Stevie, Vivien, and Frankie; and my great-grandchildren, Kaelyn, Logan, Keagan, Brayden, Caleb, and Luke. I also want to dedicate this to Mary and her husband, Craig. We have been colleagues, friends, and coauthors for so many years that I don’t know what I’ll do without them now that they have moved to Washington and to greener pastures.*

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# Corrections

## The Essentials

**Fourth Edition**

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*Washington State University*

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# Preface

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There are plenty of excellent corrections books available for use, but we think this particular book fills a niche for professors and students in that it is comprehensive and relatively inexpensive. These twin ideas became our goals and guided our development and writing of this textbook. We wanted to cover the most interesting and compelling information currently available on all aspects of corrections while also keeping the page limit within reason and the book published as a paperback. We hope readers will find this work both informative and accessible.

The information in this textbook is what you might expect from major texts. However, beyond the facts, figures, and concepts commonly contained in textbooks, this book also showcases the history and research on a number of aspects of corrections. In the interest of brevity, and in response to reviewers' suggestions, we did condense two chapters on history into one (albeit a long one!), but it still provides a historical perspective and framework for all that follows in corrections. We also condensed the two chapters on legal issues and capital punishment into one. We also believe that the presentation of research findings from academic, government, and journalistic sources, which were updated where appropriate, provides the context for understanding policy decisions and their consequences, both past and present.

Other special features of the book, which are designed to develop perspective, include brief comparative corrections sections in a number of chapters that highlight what other countries are doing in terms of correctional operation. This glimpse of corrections internationally is meant to provide readers with another way of viewing correctional practice in the United States while also giving them some insight into how alternative practices might work. In many of the chapters, we also include practitioner perspective sections on the topics discussed in those chapters; doing so allows us to learn how policy and theory get translated into practice in the field. In each chapter, we include ethical dilemmas that challenge students to think critically about the material and acknowledge the complexities of the correction system.

This book can serve as a primary text for an undergraduate course in corrections or as a supplemental text for a graduate course. The areas covered are comparable with those in other major texts, with the exceptions noted above regarding the inclusion of enhanced research, comparative perspectives, and the ethical dilemmas. Undergraduates, we hope, will find this book informative and enlivening. Graduate students might use it as an introduction, overview, and backdrop for other, more specialized books or articles. Discussion questions appear at the end of each chapter and might be used by both types of students to spur thought about, and critique of, corrections.

## Structure of the Book

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The structure of the book is much like that found in other textbooks on corrections. We begin with an overview of corrections and some key concepts. We include a chapter on history, then follow the flow of the corrections system, from sentencing, to jails, to probation, to prisons. We include a chapter on ethics in corrections, as the third chapter, to prepare students to review operations and institutional and individual actions through that

kind of lens. We then stop and examine the correctional experience for staff after examining the experience for inmates and probationers in the preceding chapters. We finish the system description with a discussion of parole and reentry. In the three chapters that follow, we address the reality for women, people of color, and juveniles in corrections. We then focus attention on legal issues, capital punishment, and correctional programming and treatment. We end with a look to the future of corrections and what developments we might expect during the coming years.

## New to This Edition

In this fourth edition of *Corrections: The Essentials*, we have combined the historical content into one chapter. We have also combined the legal issues and death penalty content into one chapter, and we have updated the coverage of ethical considerations, special populations, and the effect of immigration policies to provide students with the context for understanding policy decisions and their consequences, both past and present. We also provide more coverage of disparities in sentencing and drug courts as a means of encouraging students to think critically about U.S. drug policies and the effectiveness of those policies. In fact, all chapters have been thoroughly updated to reflect the most current data, facts, figures, and research available, thus helping students understand the world of corrections today.

## Digital Resources

At SAGE we know your time is valuable. To improve efficiency and effectiveness in teaching your classes and to help engage your students, we cultivate an impressive array of tools and resources for review, study, and further exploration, keeping both instructors and students on the cutting edge of teaching and learning. Please visit the product page for this book at [us.sagepub.com](http://us.sagepub.com) to access those materials. Learning and teaching has never been easier!

## Acknowledgments

We would like to thank executive editor Jessica Miller. We have worked with her on this edition and other corrections texts since Jerry Westby's retirement and have appreciated her support and patience with us as we updated the book for this fourth edition. We also would like to thank our development editors, Laura Kirkhuff and Darcy Scelsi, who helped shepherd the book through the revision process. Our copy editor, Jim Kelly, ensured that the sentences were clean, the spelling was correct, and every missing reference was found.

We would also like to acknowledge each other. We were colleagues at Boise State University for many years, the last several (before Mary moved to Missouri State in 2011 and then to Washington State in 2013) with offices right next door to each other. We each have come to appreciate the work and perspectives of the other. This work was a true collaboration between us and reflects our shared belief in the possibilities for decency and justice as that is elaborated on by social institutions and their workers and by individuals willing to change.

We are also grateful to the reviewers who took the time to review early drafts of our work and who provided us with helpful suggestions for improving the chapters and the book as a whole. There is no doubt that their comments made the book much better than it would have otherwise been.

Heartfelt thanks go to the following experts consulted on the first, second, third, and now fourth editions:

### Reviewers of the Fourth Edition

Samantha L. Carlo, Miami Dade College; Elizabeth L. Grossi; Dr. Paul “P. K.” Klenowki, Clarion University of Pennsylvania; Michael A. McQuiston, Las Positas College; Christopher James Utecht, College of Lake County; and Haley Zettler, University of North Texas.

### Reviewers of the Third Edition

Samantha L. Carlo, Miami Dade College; Michael S. Caudy, University of Texas at San Antonio; Erin Graybill Ellis, Texas Woman’s University; Barbara Peat, University of Texas at El Paso; Jo Ann M. Short, Northern Virginia Community College; and Karin J. Storm, Brandman University.

### Reviewers of the Second Edition

Andy Bain, University of Mount Union (Ohio); Nikki Banks, Grand Rapids Community College; Lisa M. Carter, Florida Southern College; Meghan E. Hollis, Michigan State University; Jennifer L. Lanterman, University of Nevada, Reno; Joe Marinello, James Kane Record, California University of Pennsylvania; Joel L. Carr, Texas A&M University–Kingsville; and Caryn E. Saxon, Missouri State University.

### Reviewers of the First Edition

Deborah Baskin, California State University, Los Angeles; Laura Hansen, University of Massachusetts, Boston; George Costanza, University of South Alabama; Jessie Krienert, Illinois State University; Sheree Morgan, St. Cloud State University; Mario Paparozzi, University of North Carolina, Pembroke; Marie Griffin, Arizona State University; and Robert Homant, University of Detroit.

# About the Authors

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**Mary K. Stohr** is a professor in the Department of Criminal Justice and Criminology at Washington State University. She received a PhD (1990) in political science from Washington State University, with specializations in criminal justice and public administration. Many moons ago, and before she earned her graduate degrees, she worked as a correctional officer and then as a counselor in an adult male prison in Washington State. Professor Stohr has published more than 100 academic works in the areas of correctional organizations and operation, correctional personnel, inmate needs and assessment, program evaluation, gender, policing, victimization, and drug policy outcomes. Books coauthored with others include *The American Prison* (with Cullen and Jonson); *Corrections: The Essentials* (with Walsh); *Correctional Assessment, Casework and Counseling* (with Walsh); *Corrections: A Text Reader* (with Walsh and Hemmens); *Criminal Justice Management: Theory and Practice in Justice-Centered Organizations* (with Collins); and *The Prison Experience* (with Hemmens). She was the executive director of the Academy of Criminal Justice Sciences (ACJS) for 5 years, received the Fellows Award from ACJS in 2018, received the Founders Award in 2009, and is a cofounder of the Corrections and Minorities and Women Sections of ACJS.

**Anthony Walsh**, is a professor of criminology at Boise State University. He received his PhD from Bowling Green State University at the ripe old age of 43. He has field experience in law enforcement and corrections and is the author of more than 150 journal articles and book chapters and 41 books, including *Biology and Criminology*; *Feminist Criminology Through a Biosocial Lens*; *Law, Justice, and Society* (with Hemmens); *Correctional Assessment, Casework, and Counseling* (with Stohr); *The Neurobiology of Criminal Behavior: Gene-Brain-Culture Interaction* (with Bolen, Ashgate); *Corrections: The Essentials* (with Stohr); *The Science Wars: The Politics of Gender and Race*; *Criminological Theory: Assessing Philosophical Assumptions*; *Biosociology: Bridging the Biology-Sociology Divide*; *Criminology: The Essentials* (with Jorgensen); and *Answering Atheists: How Science Points to God and the Benefits of Christianity*. His interests include biosocial criminology, statistics, and criminal justice assessment and counseling.





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# 1

## The Philosophical and Ideological Underpinnings of Corrections

### TEST YOUR KNOWLEDGE

Test your current knowledge of corrections by answering the following questions as true or false. Check your answers on page 385 after reading the chapter.

1. Whatever we choose to call it, corrections is about punishment, and punishment is considered to require philosophical justification.
2. The strongest deterrent against crime is the severity of punishment.
3. The fundamental principle of American justice is that punishment should fit the crime; all other factors are irrelevant.
4. As bad as it may sound, people feel pleasure when wrongdoers are punished.
5. The law assumes that people are rational and possess freedom of choice.
6. Philosophies of punishment depend quite a bit on concepts of human nature. (Are we naturally good, bad, or just selfish?)
7. Studies find that when criminals are punished they tend to be deterred from crime.
8. The United States incarcerates people at a higher rate than any other country in the world.

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 1.1 Describe the function of corrections and its philosophical underpinnings.
- 1.2 Differentiate between the classical and positivist schools in terms of their respective stances on the function of punishment.
- 1.3 Define and describe retribution, deterrence, incapacitation, selective incapacitation, rehabilitation, and reintegration.
- 1.4 Explain the distinction between the crime control and due process models.

### WHAT IS PUNISHMENT?

Nathaniel Hawthorne's book *The Scarlet Letter*, first published in 1850 and read in high school by generations of Americans thereafter, opens with the following words: "The founders of a new colony, whatever Utopia of human virtue and happiness they might originally project, have invariably recognized it among their earliest practical necessities to allot a portion of the virgin soil as a cemetery, and another portion as the site of a prison" (Hawthorne, 1850/2003, p. 1). Hawthorne was reminding us of two things we cannot avoid—death and human moral fallibility—and that we must make provisions for both. Of course, punishment is not all about prisons, given that other forms are available. In Hawthorne's novel, Hester Prynne is found guilty of adultery and of bearing a child out of wedlock. While all too common today, in the novel's setting, the 17th-century Massachusetts Bay Colony, it was a major crime against "God and man." The colony was a very close-knit and homogeneous community, meaning that there was strong and widespread agreement about the norms of acceptable behavior. Hester's behavior was viewed as so outrageous that among the various penalties discussed by women viewing her trial were branding with hot irons and death "for the shame she has brought on us all." However, she was sentenced to what we might call community corrections today. She was to forever endure the scorn of her community and to forever wear the badge of shame on her dress—an elaborately embroidered letter A, branding her as an adulteress.

(Continued)

(Continued)

Such a reaction to Hester's behavior was aimed just as much at onlookers as at Hester herself—"This could happen to me too!" That is, the authorities not only wished to deter Hester from such behavior in the future but also wished to dissuade all others from similar behavior. Few people give much serious thought to why we need correctional systems, what state punishment is, why we do it, and why the urge to punish wrongdoers is universal and strong. How did such an urge get into us? What are the origins of punishment? What would society be like without it? How do we justify imposing harm on others, and what do our justifications assume about human nature? These are the issues we explore in this chapter.

## Introduction: What Is Corrections?

### LO 1.1 Describe the function of corrections and its philosophical underpinnings.

As Hawthorne intimated in the opening vignette, the primary responsibility of any government is to protect its citizens from those who would harm them. The military protects us from foreign threats, and the criminal justice system protects us from domestic threats posed by criminals. The criminal justice system is divided into three major subsystems—the police, the courts, and corrections—which we may call the catch 'em, convict 'em, and correct 'em trinity. Thus, corrections is a system embedded in a broader collection of protection agencies, one that comes into play after the accused has been caught by law enforcement and prosecuted and convicted by the courts.

**Corrections:** Functions carried out by government and private agencies having to do with the punishment, treatment, supervision, and management of individuals who have been accused or convicted of criminal offenses.

**Corrections** is a generic term covering a variety of functions carried out by government (and increasingly private) agencies having to do with the punishment, treatment, supervision, and management of individuals who have been convicted or accused of criminal offenses. These functions are implemented in prisons, jails, and other secure institutions as well as in community-based correctional agencies such as probation and parole departments. *Corrections* is also the name we give to the field of academic study of the theories, missions, policies, systems, programs, and personnel that implement those functions as well as the behaviors and experiences of offenders. As the term implies, the correctional enterprise exists to "correct," "amend," or "put right" the attitudes and behavior of its "clientele." This is a difficult task because many offenders have a psychological, emotional, or financial investment in their current lifestyle and have no intention of being "corrected" (Andrews & Bonta, 2007; Walsh & Stohr, 2010).

Cynics think the correctional process should be called the "punishment process" (Logan & Gaes, 1993) because the correctional enterprise is primarily about punishment—which, as Hawthorne reminded us, is an unfortunate but necessary part of life. Earlier scholars were more accurate in calling what we now call corrections **penology**, which means the study of the processes adopted for the punishment and prevention of crime. No matter what we call our prisons, jails, and other systems of formal social control, we are compelling people to do what they do not want to do, and they experience such arm twisting as punitive regardless of what name we use.

When the grandparents of today's college students were in their youth, few thought of corrections as an issue of much importance. They certainly knew about prisons and jails, but few had any inkling of what probation or parole was. This blissful ignorance was a function of many things. The crime rate was much lower during the 1950s and early 1960s; thus, the correctional budget was a minor burden on their taxes, and fewer people probably knew anyone who had been in "the joint." Today the story is much different.

**Penology:** Study of the processes and institutions involved in the punishment and prevention of crime.



For instance, in 1963 the violent crime rate was 168 per 100,000, and in 2018 it was 369, an increase of almost 120% (Federal Bureau of Investigation, 2019). In 1963 there were just under 300,000 people in prison in the United States, and in 2018 there were just under 2.3 million, an increase of 466% (Jones, 2018). Much of this increase has been driven by the war on drugs. Because illicit drug use was extremely rare prior to the late 1960s, there was no war on drugs. Indeed, the only drugs familiar to folks in their prime during the 1950s and 1960s were those obtained at the drugstore by prescription.

Because of the increase in crime and imprisonment, most people in the United States probably know someone who is or has been in prison or jail. One in 55 U.S. adults (almost 2%) was on probation or parole in 2016 (the most recent year for which data are available; Kaeble, 2018), and many more have been in the past (Glaze & Herberman, 2013). In some neighborhoods, it is not uncommon for nearly everyone to know many people under correctional supervision. For instance, nearly 1 in 3 African American men in their 20s is under some form of correctional control, and 1 in 6 has been to prison (Ismaili, 2015). The expenditures for corrections in 2017 for all 50 states were approximately \$81 billion, with 88% going for prisons and jails and 12% for probation and parole (Wagner & Rabuy, 2017).



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**Photo 1.1** A multilevel cellblock of a large American prison.

## From Arrest to Punishment

**LO 1.2** Differentiate between the classical and positivist schools in terms of their respective stances on the function of punishment.

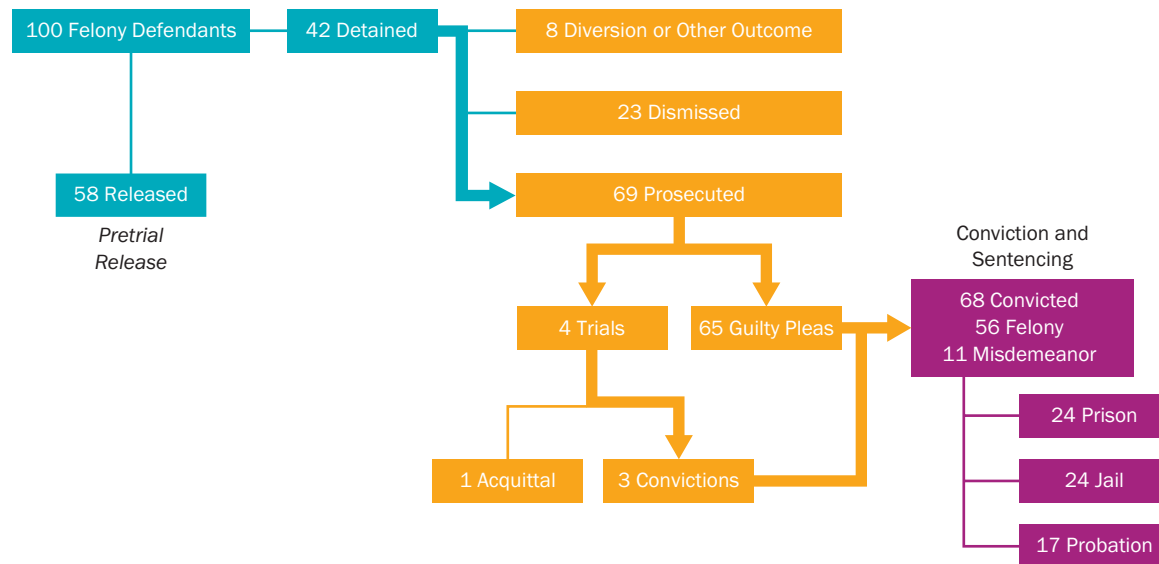
Not everyone who commits a crime is punished, of course. Many crimes are not reported, and even if they are, relatively few are solved. Figure 1.1 is based on data from the nation's 75 largest counties and indicates the typical outcomes of 100 felony arrestees (Cohen & Kyckelhahn, 2010). Only about two thirds of arrestees are prosecuted (sometimes because of lack of evidence). Of those prosecuted, some are found not guilty and some are convicted of lesser (misdemeanor) offenses after plea bargaining. This trip through the crime funnel typically results in fewer than 50% of arrests ending with jail or prison terms. The impact of the war on drugs is evident in that just over 37% of these arrests were for drug-related crimes (Cohen & Kyckelhahn, 2010). Note that only 4 of the 69 arrests resulted in actual trials, meaning that 94% of all felony prosecutions in the nation's 75 most populous counties resulted in plea bargains in which lighter sentences were imposed in exchange for guilty pleas.

## The Theoretical Underpinnings of Corrections

Just as all theories of crime contain a view of human nature, so do all models of corrections. Some thinkers (mostly influenced by sociology) assume human nature is socially constructed; that is, the human mind is basically a “blank slate” at birth and is subsequently

■ **FIGURE 1.1** Typical Outcomes of 100 Felony Defendants in the 75 Largest Counties in the United States

Source: Cohen and Kyckelhahn (2010).



formed by cultural experiences. These individuals tend to see human nature as essentially good and believe that people learn to be antisocial. If people are essentially good, then the blame for criminal behavior must be located in the bad influences surrounding them.

Others (mostly influenced by evolutionary biology and the brain sciences) argue that there is an innate human nature that evolved driven by the overwhelming concerns of all living things—to survive and reproduce. These theorists do not deny that specific behaviors are learned, but they maintain that certain traits evolved in response to survival and reproductive challenges faced by our species that bias our learning in certain directions. Some of these traits, such as aggressiveness and low empathy, are useful in pursuing criminal goals (Quinsey, 2002; Walsh, 2019). This viewpoint also sees human nature as essentially selfish (not “bad,” just self-centered) and maintains that people must learn to be prosocial rather than antisocial through a socialization process that teaches us to value and respect the rights and property of others and to develop an orientation toward wanting to do good. Criminologist Gwynn Nettler (1984) said it most colorfully on behalf of this position: “If we grow up ‘naturally,’ without cultivation, like weeds, we grow up like weeds—rank” (p. 313). In other words, we learn to be good, not bad. Being bad is the default option if we do not receive a prosocial rearing. The point we are making is that the assumptions about human nature we hold influence our ideas about how we should treat the accused or convicted once they enter the correctional system.

## A Short History of Correctional Punishment

**Punishment:** The act of imposing some unwanted burden, such as a fine, probation, imprisonment, or death, on convicted persons in response to their crimes.

Legal **punishment** may be defined as the state-authorized imposition of some form of deprivation—of liberty, resources, or even life—on a person justly convicted of a violation of the criminal law. The earliest known written code of punishment was the ancient Babylonian Code of Hammurabi, created circa 1780 BCE (the origin of “an eye for an eye, a tooth for a tooth”). These laws codified the natural inclination of individuals harmed by others to seek revenge, but they also recognized that personal revenge must be restrained if

society is not to be fractured by a cycle of tit-for-tat blood feuds. Blood feuds (revenge killings) perpetuate the injustice that “righteous” revenge was supposed to diminish. The law seeks to contain uncontrolled vengeance by substituting controlled vengeance in the form of third-party (state) punishment.

Controlled vengeance means that the state takes away the responsibility for punishing wrongdoers from the individuals who were wronged and assumes it for itself. Early state-controlled punishment, however, was typically as uncontrolled and vengeful as any grieving parent might inflict on the murderer of their child. In many parts of the world, prior to the 18th century, humans were considered born sinners because of the Christian legacy of original sin. Cruel tortures used on criminals to literally “beat the devil out of them” were justified by the need to save sinners’ souls. Earthly pain was temporary and certainly preferable to an eternity of torment if sinners died unrepentant. Punishment was often barbaric regardless of whether those ordering it bothered to justify it with such arguments or even believed those arguments themselves.

The practice of brutal punishment and arbitrary legal codes began to wane with the beginning of a period historians call the Enlightenment, or the Age of Reason. The **Enlightenment** encompassed the period roughly between the late 17th century and the late 18th century and was essentially a major shift in the way people began to view the world and their place in it. It was also marked by a narrowing of the mental distance between people and the expanding of circles of individuals considered to be “just like us.”

**Enlightenment:** Period in history when a major shift in the way people began to view the world and their place in it occurred, moving from a supernaturalistic worldview to a naturalistic and rational worldview.

## The Emergence of the Classical School

Enlightenment ideas eventually led to a school of penology that has come to be known as the **Classical School**. The leader of this school, Italian nobleman and professor of law Cesare Bonesana, Marchese di Beccaria (1738–1794), published what was to become the manifesto for the reform of judicial and penal systems throughout Europe, *Dei Delitti e Delle Pene* (*On Crimes and Punishments*) (Beccaria, 1764/1963). The book was a passionate plea to humanize and rationalize the law and to make punishment just and reasonable. Beccaria (as he is usually called) did not question the need for punishment, but he believed that laws should be designed to preserve public safety and order, not to avenge crime. He also took issue with the common practice of secret accusations, arguing that such practices led to general deceit and alienation in society. He argued that accused persons should be able to confront their accusers, to know the charges brought against them, and to be granted a public trial before an impartial judge as soon as possible after arrest and indictment.

**Classical School:** School of penology/criminology that was a nonempirical mode of inquiry similar to the philosophy practiced by the classical Greek philosophers—that is, “armchair philosophy.”

Beccaria argued that punishments should be proportionate to the harm done, should be identical for identical crimes, and should be applied without reference to the social status of either offender or victim. Beccaria (1764/1963) made no effort to plumb the depths of criminal character or motivation, arguing that crime is simply the result of “the despotic spirit which is in every man” (p. 12). He also argued that the tendency of “man” to give in to the “despotic spirit” needed to be countered by the threat of punishment, which needed to be certain, swift, and severe enough to outweigh any benefits offenders get from crime if they are to be deterred from future crime. He elaborated on these three elements of punishment as follows:

*Certainty:* “The certainty of punishment, even if it be moderate, will always make a stronger impression than the fear of another which is more terrible but combined with the hope of impunity” (p. 58).

*Swiftiness:* “The more promptly and the more closely punishment follows upon the commission of a crime, the more just and useful will it be” (p. 55).





**Photo 1.2** Italian nobleman and professor of law Cesare Bonesana, Marchese di Beccaria published what was to become the manifesto for the reform of judicial and penal systems throughout Europe, *Dei Delitti e Delle Pene* (*On Crimes and Punishments*) (Beccaria, 1764/1963).

#### Principle of utility:

The supposition that human action should be judged moral or immoral by its effects on the happiness of the community and that the proper function of the legislature is to make laws aimed at maximizing the pleasure and minimizing the pain of the population—"the greatest happiness for the greatest number."

*Severity:* "For a punishment to attain its end, the evil which it inflicts has only to exceed the advantage derivable from the crime; in this excess of evil one should include the . . . loss of the good which the crime might have produced. All beyond this is superfluous and for that reason tyrannical" (p. 43).

Beccaria made clear that punishments must outweigh any benefits offenders get from crime if they are to be deterred from future crime. But such punishment should be as certain and swift as possible if it is to have a lasting impression on the criminal and to deter others.

Beccaria also asserted that to ensure a rational and fair penal structure, punishments for specific crimes must be decreed by written criminal codes, and the discretionary powers of judges must be severely limited. The judge's task was to determine guilt or innocence and then to impose the legislatively prescribed punishment if the accused was found guilty. Many of Beccaria's recommended reforms were implemented in a number of European countries within his lifetime (Durant & Durant, 1967). Such radical change over such a short period of time, across many different cultures, suggests that Beccaria's rational reform ideas tapped into and broadened the scope of emotions such as sympathy and empathy among the political and intellectual elite of Enlightenment Europe. We tend to

feel empathy for those whom we view as "like us," and this leads to sympathy, which may lead to an active concern for their welfare. Thus, with cognition and emotion gelled into the Enlightenment ideal of the basic unity and worth of humanity, justice became both more refined and more diffuse (Walsh & Hemmens, 2014).

Another prominent figure was British lawyer and philosopher Jeremy Bentham (1748–1832). His major work, *Principles of Morals and Legislation* (Bentham, 1789/1948), is essentially a philosophy of social control based on the **principle of utility**, which posits that human actions should be judged as moral or immoral by their effects on the happiness of the community. The proper function of the legislature is thus to make laws aimed at maximizing the pleasure and minimizing the pain of the largest number in society—"the greatest good for the greatest number" (Bentham, 1789/1948, p. 151).

If legislators are to legislate according to the principle of utility, they must understand human motivation, which for Bentham (1789/1948) was easily summed up: "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do" (p. 125). This was essentially the Enlightenment concept of human nature, which was seen as hedonistic, rational, and endowed with free will. The classical explanation of criminal behavior and how to prevent it can be derived from these three assumptions.

## The Emergence of Positivism: Should Punishment Fit the Offender or the Offense?

Just as classicism arose from the 18th-century humanism of the Enlightenment, positivism arose from the 19th-century spirit of science. Classical thinkers were philosophers in

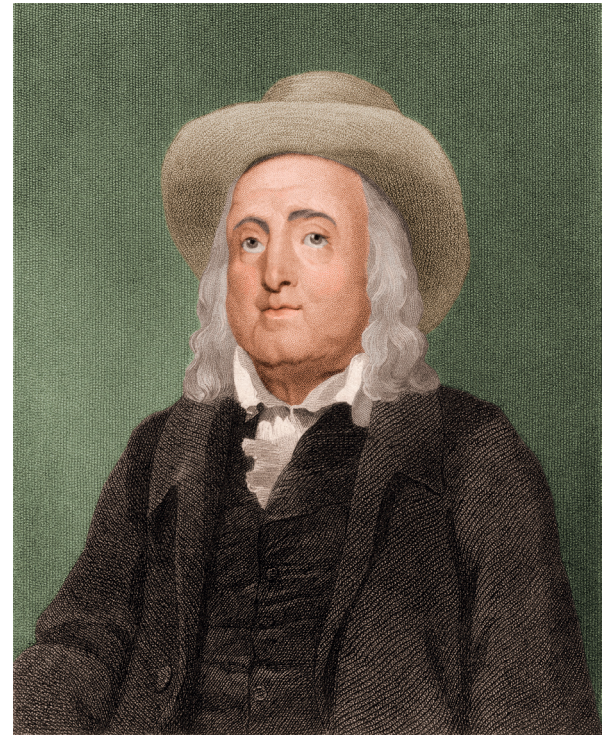
the manner of the thinkers of classical Greece (hence the term *classical*), while **positivists** took on themselves the methods of empirical science from which more “positive” conclusions could be drawn (hence the term *positivism*). They were radical empiricists who insisted that only things that can be observed and measured should concern us. This being the case, they believed that concepts underlying classical thought such as rationality, free will, motivation, conscience, and human nature should be ignored as pure speculation about the unseen and immeasurable. An essential assumption of positivism is that human actions have causes and that these causes are to be found in the uniformities that typically precede those actions. The search for causes of human behavior led positivists to dismiss the classical notion that humans are free agents who are alone responsible for their actions.

Early positivism went to extremes to espouse a hard form of determinism such as that implied in the assertion that there are “born criminals.” Nevertheless, positivism slowly moved the criminal justice system away from a concentration on the criminal act as the sole determinant of the type of punishment to be meted out and toward an appraisal of the characteristics and circumstances of the offender as an additional determinant. Because human actions have causes that may be out of the actor’s control, the concept of legal responsibility was called into question. For instance, Italian lawyer Raffaele Garofalo (1851–1934) believed that because human action is often evoked by circumstances beyond human control (e.g., temperament, extreme poverty, intelligence, certain situations), the only thing to be considered at sentencing was the offender’s “peculiarities,” or risk factors for crime.

Garofalo’s (1885/1968) only concern for individualizing sentencing was the danger offenders posed to society, and his proposed sentences ranged from execution for what he called *extreme criminals* (whom we might call psychopaths today), to transportation to penal colonies for *impulsive criminals*, to simply changing the law to deal with what he called *endemic criminals* (those who commit what we might call victimless crimes today). German criminal lawyer Franz von Liszt, on the other hand, campaigned for customized sentencing according to the rehabilitative potential of offenders, which was to be based on what scientists find out about the causes of crime (Sherman, 2005). Customized sentencing based on both the seriousness of the crime and the history and characteristics of the criminal (thereby satisfying both classicists and positivists) is routine in the United States today.

## The Function of Punishment

Although most corrections scholars agree that punishment functions as a form of social control, some view it as a barbaric throwback to precivilized times (Menninger, 1968). But can you imagine a society in which punishment did not exist? What would such a society be like? Could it survive? If you cannot realistically imagine such a society, you are not alone, given that the desire to punish those who have harmed us or otherwise cheated on the social contract is as old as the species itself. Punishment aimed at discouraging cheats is observed in every social species of animal, leading evolutionary biologists to conclude that punishment of cheats is a strategy designed by natural selection for the emergence and maintenance of cooperative behavior (Alcock, 1998; Walsh, 2014). Cooperative behavior



Stock Montage/Getty Images

**Photo 1.3** Jeremy Bentham’s major work, *Principles of Morals and Legislation* (Bentham, 1789/1948), is essentially a philosophy of social control based on the principle of utility, which posits that human actions should be judged as moral or immoral by their effect on the happiness of the community.

**Positivists:** Those who believe that human actions have causes and that these causes are to be found in the thoughts and experiences that typically precede those actions.

is important for all social species and is built on mutual trust, which is why violating that trust evokes moral outrage and results in punitive sanctions. Brain imaging studies show that when subjects punish cheats, they have significantly increased blood flow to areas of the brain that respond to reward, suggesting that punishing those who have wronged us provides both emotional relief and reward (de Quervain et al., 2004; Fehr & Gächter, 2002). These studies imply that we are hardwired to “get even,” as suggested by the popular saying “Vengeance is sweet.”

Sociologist Émile Durkheim (1858–1917) contended that punishment is functional for society in that the rituals of punishment reaffirm the justness of the social norms and allow citizens to express their moral outrage when others transgress those moral norms. Durkheim also recognized that we can temper punishment with sympathy. He observed that over the course of social evolution, humankind has moved from *retributive* justice (characterized by cruel and vengeful punishments) to *restitutive* justice (characterized by reparation—“making amends”). **Retributive justice** is driven by the natural passion for punitive revenge that “ceases only when exhausted . . . only after it has destroyed” (Durkheim, 1893/1964, p. 86). **Restitutive justice** is driven by simple deterrence and is more humanistic and tolerant, although it is still, “at least in part, a work of vengeance” (pp. 88–89). For Durkheim, restitutive responses to wrongdoers offer a balance between calming moral outrage, on one hand, and exciting the emotions of empathy and sympathy, on the other.

**Retributive justice:**

A philosophy of punishment driven by a passion for revenge.

**Restitutive justice:**

A philosophy of punishment driven by simple deterrence and a need to repair the wrongs done.



## Perspective From a Practitioner

**ROBERT BAYER, PRISON WARDEN**

**Position:** Former director of corrections and prison warden; currently an adjunct professor and prison consultant

**Location:** Reno, Nevada

**Education:** BA and MA in English literature, State University of New York at Oswego; master of public administration and PhD in English/public administration, University of Nevada, Reno

**The primary duties and responsibilities of a prison warden are:**

First, being responsible for one facility in a much larger network of facilities. To some degree, a warden can be considered the mayor of a city, and the director or commissioner is the governor of the state where the city is located, ensuring that facility policies, procedures, and general orders are fine-tuned for that specific facility within the guidelines of the department. Additionally, the warden is usually responsible for human resources, safety and security operations, budget development and implementation, and the institution’s physical plant.

They must manage critical incidents that arise and have the overall responsibility to ensure that a positive work and living culture exists within the facility. To accomplish all of these tasks, the warden typically will bring extensive experience to the job. A warden is one of the highest level management positions in a prison system and represents the “boots on the ground” administrator for the entire system.

**The qualities/characteristics that are most helpful for one in this career include:**

The ability to be both an administrator and a leader, with very thorough knowledge of how a prison functions and the laws, policies, and procedures promulgated by the system; the ability to see the big picture of corrections and how the facility functions within that picture; a comprehension of the budget process and calendar; and the ability to be politically sensitive, personable, approachable, intelligent, hardworking, and decisive yet thoughtful. As a leader, the warden’s actions must reflect the best traditions of the agency and be completely ethical in his or her decisions



and actions. The warden should reflect all of the attributes prized in a frontline employee—loyalty, dedication, honesty, and reliability—and should instill confidence in all levels of staff and inmates. Staff members want a warden who is steady under pressure and not prone to swings in mood or behavior. Ultimately, though staff members may perform an infinite variety of jobs in the facility itself, they look to the warden to ensure that they have the proper orders and resources needed to keep them safe day in and day out. Finally, the warden must be a skilled communicator at all levels, with good writing and verbal skills as well as effective listening skills.

**In general, a typical day for a practitioner in this career would include:**

Various functions, but the day should cover all three shifts to foster good communication. One should be at the facility during each shift change to ensure access to staff members as they leave and enter the next shift, personally greeting or chatting with the support staff before the workday begins. An early-morning staff meeting with the associate wardens and the maintenance supervisor is essential to review the last 24 hours of shift activities and develop a priority list of operational issues that need resolution. Next, items in the in basket are reviewed, delegated, or responded to, and it is important to physically “walk the yard” (for about 2 hours) on a daily basis to make upper management accessible to staff and inmates and to

provide the opportunity for personal observation of any issues. This is also a time to obtain firsthand feedback as to the morale, conditions, and security of the yard. Next are formally scheduled meetings with inmate families, employee group representatives, other agency representatives, and so on. Time is also spent reviewing new policies, reading inmate appeals and requests, responding to correspondence, and conducting any necessary interviews of staff. Work continues after 5 p.m. to complete paperwork, prepare court testimony, work on difficult personnel issues, and work on budget execution and construction. Once a week, do a facility inspection, looking at sanitation and security compliance, while focusing on a different aspect of facility operations each week (such as fire suppression readiness).

**My advice to someone either wishing to study or now studying criminal justice to become a practitioner in this career field would be:**

Become a “triple threat” in the field: develop a solid understanding of operations, programs, and budget; know where you are going; and study leadership and become a leader. Try to find a competent mentor in the field who will take an interest in your career and guide you on a path of experience and education that will facilitate achieving your goals. The best administrators become leaders in our field, and to succeed one needs experience, training, and education.

## The Philosophical Assumptions Behind Justifications for Punishment

A philosophy of punishment involves defining the concept of punishment and the values, attitudes, and beliefs contained in that definition as well as justifying the imposition of a painful burden on someone. When we speak of justifying something, we typically mean that we provide reasons for doing it both in terms of morality (“It’s the right thing to do”) and in terms of the goals we wish to achieve (“Do this and we’ll get that”). In other words, we expect that punishment will have favorable consequences that justify its application.

Legal scholars have traditionally identified four major objectives or justifications for the practice of punishing criminals: retribution, deterrence, rehabilitation, and incapacitation. Criminal justice scholars have recently added a fifth purpose to the list: reintegration. All theories and systems of punishment are based on conceptions of basic human nature and, thus, to a great extent on ideology. The view of human nature on which the law in every country relies today is the same view enunciated by classical thinkers Beccaria and Bentham, namely, that humans are hedonistic, rational, and possessors of free will.

**Hedonism** is a doctrine maintaining that all life goals are desirable only as means to the end of achieving pleasure or avoiding pain. It goes without saying that pleasure is

**Hedonism:** A doctrine maintaining that all goals in life are means to the end of achieving pleasure and/or avoiding pain.

**Rationality:** The state of having good sense and sound judgment on the basis of the evidence before us.

**Hedonistic calculus:** A method by which individuals are assumed to logically weigh the anticipated benefits of a given course of action against its possible costs.

**Human agency:** The capacity of humans to make choices and their responsibility to make moral ones regardless of internal or external constraints on their ability to do so.

intrinsically desirable and pain is intrinsically undesirable, and we all seek to maximize the former and minimize the latter. We are assumed to pursue these goals in rational ways. **Rationality** is the state of having good sense and sound judgment. Rational sense and judgment are based (ideally) on the evidence before us at any given time, and the rational person revises their reasoning as new evidence arises. Rationality should not be confused with morality, because its goal is self-interest, and self-interest is said to govern behavior whether in conforming or deviant directions. Crime is rational (at least in the short run) if criminals use reason and act purposely to gain desired ends. Thus, rationality is the quality of thinking and behaving in accordance with logic and reason such that one's reality is an ordered and intelligible system for achieving goals and solving problems. For the classical scholar, the ultimate goal of any human activity is self-interest, and self-interest is assumed to govern our behavior whether it takes us in prosocial or antisocial directions.

Hedonism and rationality are combined in the concept of the **hedonistic calculus**, a method by which individuals are assumed to logically weigh the anticipated benefits of a given course of action against its possible costs. If the balance of consequences of a contemplated action is thought to enhance pleasure and/or minimize pain, individuals will pursue it; if it is not, they will not. If people miscalculate, as they frequently do, it is because they are ignorant of the full range of consequences of a given course of action, not because they are irrational or stupid.

The final assumption about human nature is that humans have free will that enables them to purposely and deliberately choose to follow a calculated course of action. This is not a radical free will position that views human will as unfettered by restraints but rather a free will in line with the concept of human agency. The concept of **human agency** maintains that humans have the capacity to make choices and the responsibility to make moral ones regardless of internal or external constraints on their ability to do so. This is a form of free will that is compatible with determinism because it recognizes both the internal and external constraints that limit our ability to do as we please. If we grant criminals the dignity of possessing agency so that they purposely weigh options before deciding on a course of action, then they “can be held responsible for that choice and can be legitimately punished” (Clarke & Cornish, 2001, p. 25). It is only with the concept of agency that we can justifiably assign praise and blame to individual actions.

## The Major Punishment Justifications

**LO 1.3** Define and describe retribution, deterrence, incapacitation, selective incapacitation, rehabilitation, and reintegration.

Even though we assume that most people agree society has a right and duty to punish those who harm it, because punishment involves the state's depriving individuals of life or liberty, it has always been assumed that it is in need of ethical justification. Punishment justifications rise and fall in popularity with the ideology of the times, but there are five that have been dominant in the United States over the past century: retribution, deterrence, incapacitation, rehabilitation, and reintegration. We start with the most ancient—retribution.

### Retribution

**Retribution:** A philosophy of punishment demanding that criminals' punishments match the degree of harm the criminals have inflicted on their victims—that is, what they justly deserve.

**Retribution** is a “just deserts” model demanding that punishment match as closely as possible the degree of harm criminals have inflicted on their victims—what they justly deserve. Those who commit minor crimes deserve minor punishments, and those who commit more serious crimes deserve more severe punishments. This is the most honestly stated justification for punishment because it both taps into our most primitive punitive urges and posits

no secondary purpose for it such as rehabilitation or deterrence. In other words, it does not require any favorable consequence to justify it except to maintain that justice has been served. Logan and Gaes (1993) went so far as to claim that only retributive punishment “is an affirmation of the autonomy, responsibility, and dignity of the individual” (p. 252). By holding offenders responsible and blameworthy for their actions, we are treating them as free moral agents, not as mindless rag dolls pushed here and there by negative environmental forces. California is among the states that have explicitly embraced this justification in their criminal code (California Penal Code Sec. 1170a): “The Legislature finds and declares that the purpose of imprisonment for a crime is punishment” (as cited in Barker, 2006, p. 12).

In his dissenting opinion in a famous death penalty case (*Furman v. Georgia*, 1972) in which the U.S. Supreme Court invalidated Georgia’s death penalty statute, Justice Potter Stewart noted the “naturalness” of retribution and why the state, rather than individuals, must assume the retributive role:

I cannot agree that retribution is a constitutionally impermissible ingredient in the imposition of punishment. The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they “deserve,” then there are sown the seeds of anarchy—of self-help, vigilante justice, and lynch law.

## Deterrence

The principle behind **deterrence** is that people are discouraged from crime by the threat of punishment. Deterrence may be either specific or general. **Specific deterrence** refers to the effect of punishment on the future behavior of persons who experience it. For specific deterrence to work, it is necessary that a previously punished person make a conscious connection between an intended criminal act and the punishment suffered as a result of similar acts committed in the past. Unfortunately, it is not always clear that such connections are made or, if they are, have the desired effect. This is either because memories of the previous consequences were insufficiently potent or because they were discounted. The trouble is that short-term rewards (such as the fruits of a crime) are easier to appreciate than long-term consequences (punishment that may never come), and there is a tendency to abandon consideration of the latter when confronted with temptation unless a person has a well-developed conscience and is future oriented. The weak of conscience and the present oriented tend to consistently discount long-term consequences in favor of short-term rewards.

Committing further crimes after being punished is called **recidivism**, which is a lot more common than rehabilitation among ex-inmates. *Recidivism* refers only to crimes committed after release from prison and does not apply to crimes committed while incarcerated. Nationwide in the United States, about 33% of released prisoners recidivate within the first 6 months after release, 44% within the first year, 54% by the second year, and 67.5% by the third year (Robinson, 2005, p. 222), and these are just the ones who are caught (these figures are not updated annually, but there has been hardly any deviation over the years). Among those who do desist, a number of them cite the fear of additional punishment as a big factor (Wright, 1999). A systematic review of criminal recidivism rates worldwide found that although there were problems dealing with the different ways different countries defined recidivism (some by arrest, some by conviction only, and some only by reincarceration), the longer ex-inmates are free, the more likely they will reoffend. The study with the longest follow-up period was conducted in the United Kingdom and found that after 9 years, 78% of released offenders had reoffended (Yukhnenko, Sridhar, & Fazel, 2019).

**Deterrence:** A philosophy of punishment aimed at the prevention of crime by the threat of punishment.

**Specific deterrence:** The supposed effect of punishment on the future behavior of persons who experience the punishment.

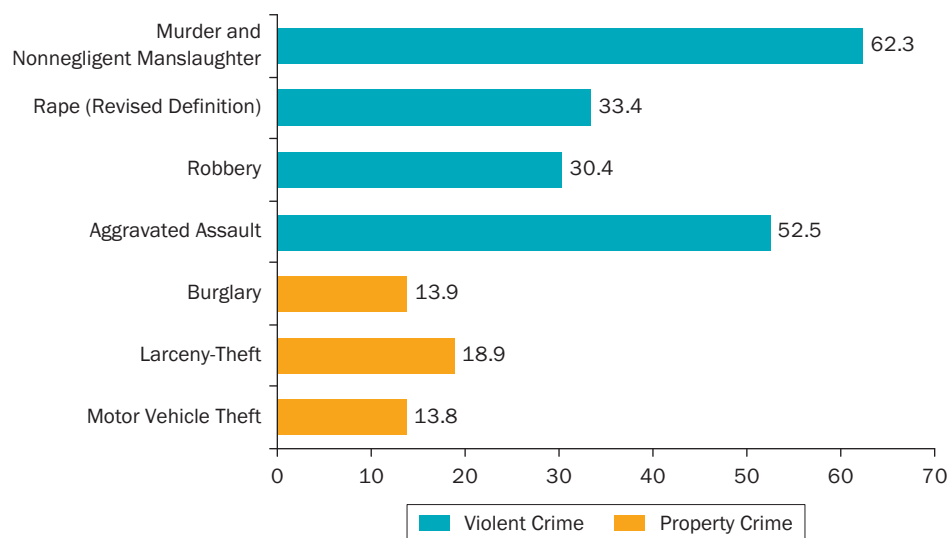
**Recidivism:** When an ex-offender commits further crimes.



■ **FIGURE 1.2** Percentage of Crimes Cleared by Arrest or Exceptional Means\* in 2018

Source: Federal Bureau of Investigation (2019).

\*A crime cleared by "exceptional means" occurs when the police have a strong suspect but something beyond their control precludes a physical arrest (e.g., death of suspect).



As Beccaria insisted, for punishment to positively affect future behavior, there must be a relatively high degree of certainty that punishment will follow a criminal act, the punishment must be administered very soon after the act, and it must be painful. The most important of these is certainty, but as we see from Figure 1.2, showing clearance rates for major crimes in 2018, the probability of being arrested is very low, especially for property crimes, and one in three murderers get away with it—so much for certainty. Factoring out the immorality of the enterprise, burglary appears to be a rational career option for a capable criminal.

If a person is caught, the wheels of justice grind very slowly. Typically, many months pass between the act and the imposition of punishment—so much for swiftness. This leaves the law with severity as the only element it can realistically manipulate (it can increase or decrease statutory penalties almost at will), but it is unfortunately the least effective element (Reynolds, 1998). Studies from the United States and the United Kingdom find substantial negative correlations (as one factor goes up, the other goes down) between the likelihood of conviction (a measure of certainty) and crime rates, but they find much weaker correlations in the same direction for the severity of punishment; that is, increased severity leads to lower offending rates (Langan & Farrington, 1998).

The effect of punishment on future behavior also depends on the **contrast effect**, defined as the contrast or comparison between the possible punishment for a given crime and the usual life experience of the person who may be punished. For people with little to lose, arrest and punishment may be perceived as merely an inconvenient occupational hazard. But for those who enjoy a loving family and the security of a valued career, the prospect of incarceration is a nightmarish contrast. Like so many other things in life, deterrence works least for those who need it the most (Austin & Irwin, 2001).

**General deterrence** refers to the preventive effect of the threat of punishment on the general population; thus, it is aimed at *potential* offenders. Punishing offenders serves as an example to the rest of us of what may happen if we violate the law, as we noted in the

**Contrast effect:** The effect of punishment on future behavior depending on how much the punishment and the usual life experience of the person being punished differ or contrast.

**General deterrence:** The presumed preventive effect of the threat of punishment on the general population.

opening vignette. As Radzinowicz and King (1979) put it, “People are not sent to prison primarily for their own good, or even in the hope that they will be cured of crime. . . . It is used as a warning and deterrent to others” (p. 296). The threat of punishment for law violators deters a large but unknown number of individuals who might commit crimes if no such system existed.

Are we putting too much faith in the ability of criminals and would-be criminals to calculate the costs and benefits of engaging in crime? Although many violent crimes are committed in the heat of passion or under the influence of mind-altering substances, there is evidence underscoring the classical idea that individuals do (subconsciously at least) calculate the ratio of expected pleasures to possible pains when contemplating their actions. Becker (1997) dismissed the idea that criminals lack the knowledge and foresight to take punitive probabilities into consideration when deciding whether to continue committing crimes. He stated, “Interviews of young people in high crime areas who do engage in crime show an amazing understanding of what punishments are, what young people can get away with, how to behave when going before a judge” (p. 20). Of course, incentives and disincentives to law-abiding or criminal behavior are perceived differently because of the contrast effect and ingrained habits: “Law abiding people habitually ignore criminal opportunities. Law breakers habitually discount the risk of punishment. Neither calculates” (van den Haag, 2003). This does not mean that criminals are impervious to realistic threats of punishment.

Deterrence theorists do not view people as calculating machines doing their mental math before engaging in any activity. They are simply saying that behavior is governed by its consequences. Our rational calculations are both subjective and bounded; we do not all make the same calculations or arrive at the same game plan when pursuing the same goals. Think how the contrast effect would influence the calculations of a zero-income, 19-year-old high school dropout with a drug problem as opposed to a 45-year-old married man with two children and a \$90,000 annual income. We all make calculations with less than perfect knowledge and with different mind-sets, different temperaments, and different cognitive abilities, but to say that criminals do not make such calculations is to strip them of their humanity and to make them pawns of fate.

Some reviews of deterrence research indicate that legal sanctions do have a “substantial deterrent effect” (Nagin, 1998, p. 16; see also Wright, 1999), and some researchers have claimed that increased incarceration rates account for about 25% of the variance in the decline in violent crime over the past decade or so (Rosenfeld, 2000; Spelman, 2000). Paternoster (2010) cited studies demonstrating that 20% to 30% of the decrease in crime from its peak during the early 1990s is attributable to the approximately 52% increase in the imprisonment rate. He stated, “There is a general consensus that the decline in crime is, at least in part, due to more and longer prison sentences, with much of the controversy being over how much of an effect” (p. 801). Of course, this leaves 70% to 75% of the decrease to be explained by other factors. Unfortunately, even for the 30% figure, we cannot determine whether we are witnessing a *deterrent* effect (i.e., has crime declined because more would-be criminals have perceived a greater punitive threat?) or an *incapacitation* effect (i.e., has crime declined because more violent people are behind bars and, thus, not at liberty to commit violent crimes on the outside?). Of course, it does not need to be one or the other given that both effects may be operating. Society benefits from crime reduction regardless of why it occurs.

## Incapacitation

**Incapacitation** refers to the inability of criminals to victimize people outside prison walls while they are locked up. Its rationale is summarized in Wilson’s (1975) remark, “Wicked people exist. Nothing avails except to set them apart from innocent people” (p. 391). The incapacitation justification probably originated with Enrico Ferri’s concept of social defense.

**Incapacitation:** A philosophy of punishment that refers to the inability of criminals to victimize people outside prison walls while they are locked up.

For Ferri (1897/1917), to determine punishment, notions of culpability, moral responsibility, and intent were secondary to an assessment of offenders' strength of resistance to criminal impulses, with the express purpose of averting future danger to society. He believed that moral insensibility and lack of foresight, underscored by low intelligence, were criminals' most marked characteristics. For Ferri, the purpose of punishment is not to deter or rehabilitate but rather to defend society from criminal predation. The characteristics of criminals prevented them from basing their behavior on rational calculus principles, so how could their behavior be deterred?

Incapacitation obviously "works" while criminals are incarcerated. Currie (1999) stated that in 1995 there were 135,000 inmates in prison whose most serious crime was robbery and that each robber on average commits five robberies per year. Had these robbers been left on the streets, they would have been responsible for an additional  $135,000 \times 5$ , or 675,000, robberies on top of the 580,000 actual robberies reported to the police in 1995. Further evidence was provided by a "natural experiment" when the Italian government released one third (about 22,000) of Italy's prison inmates with 3 years or less left to serve on their sentences in 2006. This pardon resulted from budgetary concerns and prison overcrowding concerns. Buonanno and Raphael's (2013) analysis of released convicts found that the incapacitation effect was between 14 and 18 crimes committed per year (only theft and robbery arrests were included in the analysis) after release. In other words, the released offenders committed an average of about 16 robberies or thefts per year after release. The estimated saving of the collective pardon was 245 million euros (about \$316 million), and the estimated crime cost was between 466 million and 2.2 billion euros (between about \$606 million and \$2.9 billion). Obviously, the pardons, while saving the prison system a substantial amount of money, cost Italian society as a whole dearly.

The incapacitation issue has produced some lively debates about the relative costs and benefits to society of incarceration. Attempts to estimate these have proved to be difficult and controversial. In 1987, economist Edwin Zedlewski used national crime data to calculate that the typical offender committed 187 crimes a year, and the typical crime exacted \$2,300 in property losses or in physical injuries and human suffering. Multiplying these figures, Zedlewski (1987) estimated that the typical imprisoned felon was responsible for \$430,000 in monetary costs to society for each year of freedom. He then divided that figure by the annual cost of incarceration in 1977 (\$25,000) and concluded that the social benefits of imprisonment outweighed the costs by 17 to 1.

Zedlewski's (1987) findings were severely criticized, including a critical article by supporters of incarceration who argued that the typical offender commits 15 crimes in a year rather than 187 (DiIulio & Piehl, 1991), which reduces the benefit/cost ratio to 1.38 to 1 from 17 to 1. These different estimates of criminal activity are the result of Zedlewski's using the mean number (arithmetic average) of crimes per year and DiIulio and Piehl's using the median number (a measure of the "typical" in which half of criminals commit fewer than 15 crimes and half commit more). Using the mean inflates the typical by including in the calculation crimes committed by the most highly criminally involved offenders. Using only the dollar costs to estimate the social costs of crime, of course, ignores the tremendous physical and emotional cost to victims as well as other important considerations (Walker, 2001).

## Selective Incapacitation

This brings up the idea of **selective incapacitation**, which is a punishment strategy that reserves prison largely for a select group of offenders composed primarily of violent repeat offenders but may also include other types of incorrigible offenders. Birth cohort studies (a *cohort* is a group composed of subjects having something in common, such as being born

### Selective incapacitation:

A punishment strategy that reserves prison largely for a distinct group of offenders composed primarily of violent repeat offenders.

within a given time frame or in a particular place) from a number of different locations find that about 6% to 10% of offenders commit the majority of all crimes. For instance, in the 1945 birth cohort studies of Wolfgang, Figlio, and Sellin (1972), 6.3% of the 9,945 cohort members committed 71% of the murders, 73% of the rapes, and 82% of the robberies attributed to members of the cohort.

Saving prison space mostly for high-rate violent offenders better protects the community and saves it money. The problem with this strategy, however, involves identifying high-rate violent offenders *before* they become high-rate violent offenders; identifying them after the fact is easy. Generally speaking, individuals who begin committing predatory delinquent acts before they reach puberty are the ones who will continue to commit crimes across the life course (DeLisi, 2005; Moffitt & Walsh, 2003). The incapacitation effect is more starkly driven home by a study of the offenses of 39 convicted murderers committed *after* they had served their time for murder and were released from prison. Between 1996 and 2000, they had 122 arrests for serious violent crimes (including 7 additional murders), 218 arrests for serious property crimes, and 863 other arrests among them (DeLisi, 2005, p. 165).

What would be the dollar costs saved had these 39 murderers not been released? The total social cost of a single murder has been estimated at \$8,982,907, and the average cost of other “serious violent crimes” (rape, aggravated assault, and robbery) has been estimated at \$130,035 (McCollister, French, & Fang, 2010). The 7 murders (\$62,880,349) and 115 other serious violent crimes (\$14,954,063) yield a total of \$77,834,412, or \$15,566,882 per year over the 5-year period, and that is without adding in the 218 arrests for serious property crimes and the 863 other arrests. Of course, the biggest loss of all is the grief suffered by the survivors of murder victims.

None of these authors was arguing for an increase in gross incarceration of low-rate or low-seriousness offenders. As we increase incarceration more and more, we quickly skim off the 5% to 10% of serious offenders and begin to incarcerate offenders who would best be dealt with within the community. In monetary (and other social cost) terms, we have a situation that economists call “the law of diminishing returns.” In essence, this means that while we may get a big bang for our buck at first (incarcerating the most serious criminals), the bang quickly diminishes to a whimper and even turns to a net loss as we continue to reel in minor offenders.

The problem is predicting which offenders should be selectively incapacitated. Although there are a number of excellent prediction scales in use today to assist us in estimating who will and who will not become a high-rate offender, the risk of too many false positives (predicting that someone will become a high-rate offender when in fact they will not) is always present (Piquero & Blumstein, 2007). However, incarceration decisions are not made on predictions about the future; rather, they are made on knowledge of past behavior—the past is prologue, as Shakespeare said.

## Rehabilitation

The term **rehabilitation** means to restore or return to constructive or healthy activity. Whereas deterrence and incapacitation are justified mainly on classical grounds, rehabilitation is primarily a positivist concept. The rehabilitative goal is based on a medical model that used to view criminal behavior as a moral sickness requiring treatment. Today this model views criminality in terms of “faulty thinking” and views criminals as in need of “programming” rather than “treatment.” The goal of rehabilitation is to change offenders’ attitudes so they come to accept that their behavior was wrong, not to deter them by the threat of further punishment. We defer further discussion of rehabilitation until Chapter 4, devoted to correctional treatment and rehabilitation.

**Rehabilitation:** A philosophy of punishment aimed at “curing” criminals of their antisocial behavior.

**Reintegration:** A philosophy of punishment that aims to use the time criminals are under correctional supervision to prepare them to reenter the free community as well equipped to do so as possible.

Reintegration

The goal of **reintegration** is to use the time criminals are under correctional supervision to prepare them to reenter (or reintegrate with) the free community as well equipped to do so as possible. In effect, reintegration is not much different from rehabilitation, but it is more pragmatic, focusing on concrete programs such as job training rather than attitude change. There are many challenges associated with this process, so much so that, like rehabilitation, it warrants a chapter to itself and will be discussed in detail in the context of parole.

Table 1.1 provides a summary of the key elements (justification, strategy, focus of perspective, and image of offenders) of the five punishment philosophies or perspectives discussed. The commonality that they all share to various extents is, of course, the prevention of crime.

TABLE 1.1 Summary of Key Elements of Different Correctional Perspectives

|                         | RETRIBUTION  | DETERRENCE   | INCAPACITATION                                | REHABILITATION  | REINTEGRATION   |
|-------------------------|--|--|---|---|---|
| Justification           | Moral<br>Just deserts  | Prevention of<br>further crime                                   | Risk control<br>Community<br>protection       | Offenders have<br>correctable<br>deficiencies                           | Offenders have<br>correctable<br>deficiencies                             |
| Strategy                | None: offenders<br>simply deserve to<br>be punished                          | Make punishment<br>more certain, swift,<br>and severe            | Offenders cannot<br>offend while in<br>prison | Treatment to<br>reduce offenders’<br>inclination to<br>reoffend         | Concrete<br>programming to make<br>for successful reentry<br>into society |
| Focus of<br>perspective | The offense and<br>just deserts  | Actual and<br>potential offenders                                | Actual offenders                              | Needs of offenders  | Needs of offenders  |
| Image of<br>offenders   | Free agents<br>whose humanity<br>we affirm by<br>holding them<br>accountable | Rational beings<br>who engage in<br>cost/benefit<br>calculations | Not to be trusted but<br>to be constrained    | Good people who<br>have gone astray<br>and will respond to<br>treatment | Ordinary folks who<br>require and will<br>respond to concrete<br>help     |

The Due Process and Crime Control Models and Cultural Comparisons

LO 1.4 Explain the distinction between the crime control and due process models.

A useful way of grounding our discussion of the different correctional systems in different countries is to see how they stack up in terms of Packer’s (1964/1997) crime control versus due process models of criminal justice. Packer proposed two “ideal-type” models (pure types that exaggerate differences), reflecting different value choices undergirding the operation of the criminal justice system.

The major tension between these two models is the emphasis on justice for an offended community and justice for those who offend against it. Equally moral individuals and cultures can hold very different conceptions of justice, with some placing an emphasis on justice for the offended community and others placing an emphasis on justice for those who offend against it.



## Comparative Corrections

### THE FOUR LEGAL TRADITIONS AND WHY THEY ARE USEFUL TO KNOW

Some chapters in this book have a box providing a comparative perspective on topics discussed from correctional systems in other countries. There are many advantages to studying a familiar subject from a different vantage point. The great philosopher Aristotle once said that if you know only your own culture, you don't know your own culture. How true that is: We always need something different to compare with something familiar in order to really understand the familiar. After all, we cannot know what "up," "tall," "no," and "true" mean without knowing what "down," "short," "yes," and "false" mean. Of course, other countries' correctional systems have many things in common with ours—they all have jails and prisons—but their goals and practices may depart significantly from ours. Knowledge of systems other than our own provides us with a new understanding and appreciation of our own and will better equip us to identify both the strengths and weaknesses of the American system. Our aim is to examine a representative country of each of the four main families of law in the world today: common, civil or code, Islamic, and socialist.

The countries we primarily (but not exclusively) focus on are the United Kingdom (England and

Wales; the other two countries of the United Kingdom, Scotland and Northern Ireland, have separate correctional systems), France, China, and Saudi Arabia. These countries were chosen because each best illustrates its respective family of law. The common law originated many centuries ago in England—the country with which the United States shares the heritage of law, language, and culture—and has slowly evolved over the centuries. We focus on France to examine the civil law tradition because modern civil (or code) law began under Napoleon in 1804. China was chosen because it is the largest socialist legal system in the world. Finally, Saudi Arabia was chosen to illustrate the Islamic legal tradition because the Koran (Islam's holy book) functions as the Saudi Arabian constitution (Walsh & Hemmens, 2014). The civil, socialist, and Islamic legal traditions are all code systems, which are systems that come "ready-made" rather than systems that evolved slowly, as did the common law. Judges in code countries cannot "make law" by precedent as they can in common law countries. Rather, they are supposed to act uniformly in accordance with the criminal code, and consequently there is less judicial oversight of the correctional system in those countries.

The first model is the **crime control model**. This model emphasizes community protection from criminals and stresses that civil liberties can have real meaning only in a safe, well-ordered society. To achieve such a society, it is necessary to suppress criminal activity swiftly, efficiently, and with finality, and this demands a well-oiled criminal justice system in which cases are handled informally and uniformly in "assembly line" fashion. Police officers must arrest suspects, prosecutors must prosecute them, and judges must sentence them "uncluttered with ceremonious rituals that do not advance the progress of the case" (Packer, 1964/1997, p. 4). To achieve finality, the occasions for challenging the process (appeals) must be kept to a minimum. The assumption is that such a process will more efficiently screen out the innocent and that those who are not screened out may be considered "probably guilty." Packer (1964/1997) did not want us to think of a presumption of guilt as the conceptual opposite of the presumption of innocence; rather, "reduced to its barest essentials and when operating at its most successful pitch," the crime control model consists of two elements: "(a) an administrative fact-finding process leading to the exoneration of the suspect, or to (b) the entry of a plea of guilty" (p. 5).

The **due process model** is the second model. Rather than a system run like an assembly line, the due process model is more like an obstacle course in which impediments to carrying the accused's case further are encountered at every stage of processing. Police officers must obtain warrants when possible and must not interrogate a suspect without the suspect's consent, evidence may be suppressed, and various motions may be filed that may

**Crime control model:** A model of law that emphasizes community protection from criminals and stresses that civil liberties can have real meaning only in a safe, well-ordered society.

**Due process model:** A model of law that stresses the accused's rights more than the rights of the community.



free a factually guilty person. These and other obstacles are placed in the way to ensure that evidence is obtained in a legal manner. If the person is convicted, they may file numerous appeals, and it may take years to gain closure of the case. The due process model is more concerned with the integrity of the legal process than with its efficiency and with legal guilt rather than whether the accused is factually guilty. Factual guilt translates into legal guilt only if the evidence used to determine it was obtained in a procedurally correct fashion.

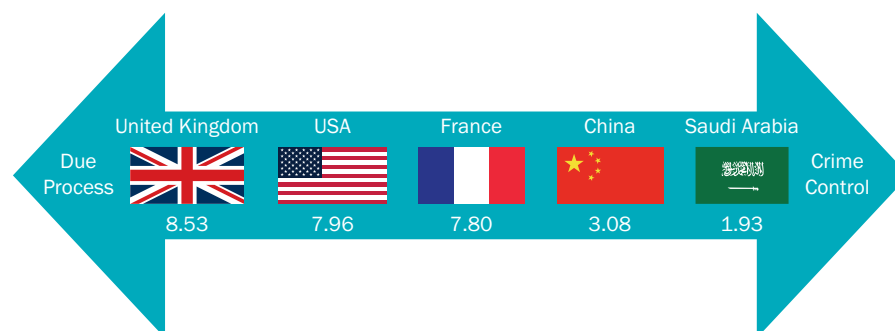
Which model do you prefer, and which model do you think best exemplifies the ideals of justice? It may be correct to say that under a crime control model more innocent people may be convicted, but that depends on which country we are talking about and how far along the continuum it goes in its practices. It is also true that under a due process model more (factually) guilty people will be set free, but again that depends on the country and the extent to which the model is “pure.” In the first instance the individual has been unjustly victimized, and in the second instance the community has been unjustly victimized. It is clear that both models have their faults as well as their strengths. The danger of a runaway crime control model is a return to the days when due process was nonexistent, and the danger of a runaway due process model is that truth and justice may get lost in a maze of legal ritualism. But remember these are ideal-type models that do not exist in their “pure” form anywhere in the world; rather, all criminal justice systems lie on a continuum between the crime control and due process extremes.

Packer’s models are more about the processes followed in the police and prosecution legs of criminal justice (the catch ‘em and convict ‘em legs), but they also apply to the third leg (the correct ‘em leg) of the criminal justice system. While it may be true that there is less public concern for the rights of convicted criminals than for the rights of accused criminals, and while it is also true that convicted criminals have fewer rights than law-abiding folks, the criminal justice model followed by the police and the courts in a given nation is also the model followed by its correctional system.

Figure 1.3 places the countries to be primarily discussed on a due process–crime control continuum according to the degree to which they emphasize one model or the other. Terrill (2013) noted that the United States, the United Kingdom, and France “vacillate between the two models, but they are more sensitive to due process issues, [while China and Saudi Arabia] favor the crime control model and often show little regard for the due process model” (p. 15). Overall, the United States is closer to a pure due process model than our comparative nations, and Saudi Arabia is the closest to a pure crime control model.

■ **FIGURE 1.3** Situating Comparative Countries on the Due Process–Crime Control Continuum and on Their Democracy Scores (Numbers Under Flags)

Source: Based on data from the Economist Intelligence Unit (2019).







## In Focus 1.1

### IS THE UNITED STATES HARD OR SOFT ON CRIME?

A frequently heard criticism of the criminal justice system in the United States to which we can apply the comparative perspective is that the United States is soft on crime. If we define hardness or softness on crime in terms of incarceration rates, the accompanying figure indicating incarceration rates per 100,000 for our comparison countries and certain other countries in 2015 conveys the opposite message. The retention of the death penalty by the United States, which has been eschewed by other “civilized” nations, also belies the contention that we are soft on crime. Only Russia, with a rate of 445 per 100,000, comes close to the American incarceration rate, and the closest any Western nations come to the U.S. rate are England and Wales, with a rate nearly 5 times lower. Comparisons among nations on this question are typically made using only Western democratic nations, leading to the conclusion that the United States is hard on crime. But if we are to make valid comparisons, we cannot cherry-pick our countries to arrive at a conclusion that fits our ideology.

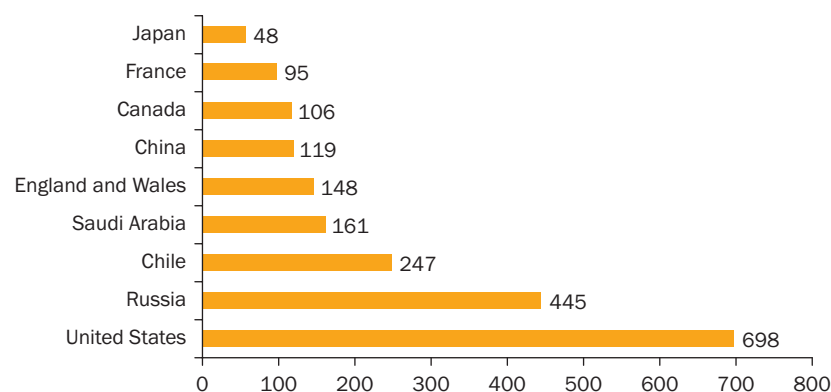
If we define hardness and softness in terms of alternative punishments or the conditions of confinement, then the United States is soft on crime relative to many countries—although a better description would be *more humane*. For instance, although China is shown as having an incarceration

rate more than 6 times lower than the U.S. rate, it is the world’s leader in the proportion of its criminals it executes each year. Furthermore, punishment in some fundamentalist Islamic countries, such as Saudi Arabia and Afghanistan under the Taliban, has often included barbaric corporal punishments for offenses considered relatively minor in the West. Drinkers of alcohol may get 60 lashes, robbers may have an alternate-side hand and foot amputated, and women accused of “wifely disobedience” may be subjected to corporal punishment (Walsh & Hemmens, 2014).

Another problem is that crime rates are calculated per 100,000 *citizens*, which is not the same as the rate per 100,000 *criminals*. If the United States has more criminals than these other countries, then perhaps the greater incarceration rate is justified. No one knows how many criminals any country has, but we can get a rough estimate from a country’s crime rates—that is, the incarceration rate per 1,000 recorded crimes. For instance, the U.S. homicide rate is about 5 times that of England and Wales, which roughly matches the 5 times greater incarceration rate in the United States. However, when it comes to property crimes, Americans are about in the middle of the pack of nations in terms of the probability of being victimized, yet burglars serve an average of 16.2 months in prison in the United States, compared

**FIGURE 1.4** 2015 Incarceration Rates per 100,000 Population for Comparative Countries and Selected Other Countries

Source: Adapted from figures provided by Walmsley (2016).



(Continued)

(Continued)

with 6.8 months in Britain and 5.3 months in Canada (Mauer, 2005). On this measure, the United States is more on the crime control end of the due process–crime control continuum than France or England and Wales. Does this mean the United States is too hard, or Britain and Canada are too soft, on crime? From a crime control perspective, these nations can be seen as excessively soft on crime at the expense of rising crime rates, although crime has fallen in those countries since the 1990s, just as it has in the United States (Baumer & Wolff, 2014).

So is the United States softer or harder on crime than other countries? The answer obviously depends on how we conceptualize and measure the concepts of hardness and softness and with which countries we compare ourselves. Compared with countries that share our democratic ideals, we are tough on

crime (and because of our retention of the death penalty, some would even say barbaric); compared with countries most distant from Anglo-American ideals, we are soft on crime, and for that we should be grateful.

All societies develop rules for ensuring peace, order, predictability, and cultural survival and provide sanctions for those who do not follow them. These rules and the sanctions suffered by those accused and convicted of breaking them may differ significantly from society to society because they reflect a particular culture's history and its current social, political, and economic practices, philosophies, and ideals. This chapter briefly introduces you to correctional practices used in four societies other than the United States.

What are the criteria we used for placing our four countries on this continuum? One way of attempting to measure the degree to which a society has a due process versus a crime control model is the degree to which it respects the ideals of democracy. The numbers beneath the respective flags represent each country's "democracy score" on a scale of 1 to 10 according to the Economist Intelligence Unit (2019). This score is based on 63 different factors, such as public political participation and respect for civil rights, and their scores support our ordering of countries in the figure. We should note that on a world scale, neither the United Kingdom nor Saudi Arabia occupies the top or bottom place. Norway had the highest democracy score (9.87), and North Korea had the lowest (1.08), in 2018. The French system probably represents the "right" balance between the rights of the accused (due process) and the protection of society (crime control); others may disagree with this assessment.

## SUMMARY

**LO 1.1** Describe the function of corrections and its philosophical underpinnings.

- Corrections is a social function designed to hold, punish, supervise, deter, and possibly rehabilitate the accused or convicted. Corrections is also the study of these functions.
- Although it is natural to want to exact revenge ourselves when people do us wrong, the state has taken over this responsibility for punishment to prevent endless tit-for-tat feuds. Over social evolution, the state has

moved to more restitutive forms of punishment that, while serving to tone down the community's moral outrage, tempers it with sympathy.

**LO 1.2** Differentiate between the classical and positivist schools in terms of their respective stances on the function of punishment.

- Much of the credit for the shift away from retributive punishment must go to the Classical School of criminology, which was imbued with the

humanistic spirit of the Enlightenment. The view of human nature (hedonistic, rational, and possessing free will) held by thinkers of the time was that punishment should primarily be used for deterrent purposes, that it should only just exceed the gains of crime, and that it should apply equally to all who have committed the same crime regardless of any individual differences.

- Opposing classical notions of punishment are those of the positivists, who rose to prominence during the 19th century and who were influenced by the spirit of science. Positivists rejected the philosophical underpinnings regarding human nature of the classicists and declared that punishment should fit the offender rather than the crime.
- LO 1.3** Define and describe retribution, deterrence, incapacitation, selective incapacitation, rehabilitation, and reintegration.
- The objectives of punishment are retribution, deterrence, incapacitation, rehabilitation, and reintegration, all of which have come in and out of favor over the years.
  - Retribution is simply just deserts—getting the punishment one deserves with no other justification needed.
  - Deterrence is the assumption that the threat of punishment causes people not to commit crimes. We identified two kinds of deterrence: specific and general. The effects of deterrence on potential offenders depend to a great extent on the contrast between

the conditions of punishment and the conditions of everyday life.

- Incapacitation means that the accused and convicted cannot commit further crimes (if they did so in the first place) against the innocent while incarcerated. Incapacitation works only while offenders are behind bars, but we should be more selective about who we incarcerate.
- Rehabilitation centers on efforts to socialize offenders in prosocial directions while they are under correctional supervision so that they will not commit further crimes.
- Reintegration involves efforts to provide offenders with concrete skills they can use that will give them a stake in conformity.

**LO 1.4** Explain the distinction between the crime control and due process models.

- Throughout this book, we will offer comparative perspectives on corrections from other countries, focusing primarily on the United Kingdom, France, China, and Saudi Arabia. These countries best exemplify their respective legal traditions and are situated quite far apart on Packer's crime control–due process model of criminal justice.
- The United States leads the world in the proportion of its citizens in prison. Whether this is indicative of hardness on crime (more prison time for more people) or softness on crime (imprisonment as an alternative to execution or mutilation) depends on how we view hardness versus softness and with which countries we compare the United States.

## KEY TERMS

Classical School 5  
 Contrast effect 12  
 Corrections 2  
 Crime control model 17  
 Deterrence 11  
 Due process model 17  
 Enlightenment 5  
 General deterrence 12  
 Hedonism 9

Hedonistic calculus 10  
 Human agency 10  
 Incapacitation 13  
 Penology 2  
 Positivists 7  
 Principle of utility 6  
 Punishment 4  
 Rationality 10  
 Recidivism 11

Rehabilitation 15  
 Reintegration 16  
 Restitutive justice 8  
 Retribution 10  
 Retributive justice 8  
 Selective incapacitation 14  
 Specific deterrence 11

## DISCUSSION QUESTIONS

1. Discuss the implications for a society that decides to eliminate all sorts of punishment in favor of forgiveness.
2. Why do we take pleasure in the punishment of wrongdoers? Is it a good or bad thing that we take pleasure in punishment? What evolutionary purpose does punishment serve?
3. Discuss the assumptions about human nature held by the classical thinkers. Are we rational, seekers of pleasure, and free moral agents? If so, does it make sense to try to rehabilitate criminals?
4. Discuss the assumptions underlying positivism in terms of the treatment of offenders. Do they support Garofalo's idea of individualized justice based on the danger the offender poses to society or von Liszt's idea of individualized justice based on the rehabilitative potential of the offender?
5. Which justification for punishment do you favor? Is it the one you think "works" best in terms of preventing crime, or do you favor it because it fits your ideology?
6. What is your position on the issue of hardness versus softness relating to the U.S. stance on crime? We are tougher than other democracies. Is that acceptable to you? We are also softer than more authoritarian countries. Is that acceptable to you also? Why or why not?







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# 2

## Early Corrections From Ancient Times to Correctional Institutions

### TEST YOUR KNOWLEDGE

Test your current knowledge of correctional history by answering the following questions. Check your answers on page 385 after reading the chapter.

1. The kind of punishment one received for wronging others in ancient civilizations often depended on the wealth and status of the offended party and of the offender. (True or false?)
2. Galley slavery ended when the technological innovation of sails was used to propel ships. (True or false?)
3. The concept of the panopticon, devised by Jeremy Bentham, included the ingenious combination of labor and money to improve conditions of prisons. (True or false?)
4. William Penn's great law was based on Quaker principles and deemphasized the use of corporal and capital punishment. (True or false?)
5. What are the main differences between the Pennsylvania prison system and the New York prison system?
6. The Auburn Prison featured complete separation from other inmates. (True or false?)
7. To maintain control in the early years at the Auburn and Sing Sing prisons, liberal use of "the lash," along with other methods, was required. (True or false?)
8. The 1870 American Prison Congress was held to celebrate the successes of prisons. (True or false?)
9. To be termed a correctional institution, a prison should have some rehabilitation programming for inmates. (True or false?)

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 2.1 Explain the evolution of corrections and correctional institutions.
- 2.2 Compare the different types of corrections used historically.
- 2.3 Identify some of the key Enlightenment thinkers, their ideas, and how they changed corrections.
- 2.4 Identify the housing and punishments used in prisons and jails in colonial times.
- 2.5 Evaluate the two predominant prison systems of the early 1800s and their strengths and weaknesses.
- 2.6 Summarize what the social critics (Beaumont, Tocqueville, and Dix) thought of early prisons and why.
- 2.7 Explain why reform of prisons and jails was needed and how those reform efforts worked out.
- 2.8 Assess where we are today in America in terms of prison types and how we got there.
- 2.9 Describe the prevailing themes in correctional history.

### JIM CROW TREATMENT IN PRISONS

A Black Folsom Prison inmate named W. Mills complained about the racial segregation of prison jobs in the 1940s in a letter to the Governor's Investigating Committee in 1943. "Our servitude here is limited to inferior work. The only work that is given to Negroes is such as porter work, digging in the ground and breaking rock or whatever else the white inmates don't want to do." Among the most powerful testimonies offered to racial segregation in the California prison system came from Wesley Robert Wells, a Black prisoner who contested the conditions of prison during Jim Crow, and whose death sentence for throwing an ashtray

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at a guard became a rallying point for civil rights and radical labor advocates in the 1950s. Wells explained that racism abounded in the California prison system when he arrived there in 1928. “There was a lot of jimcrow [sic] stuff in Quentin in those days—just like there is now, and if you objected you were a marked number. . . . I was young and I held my head up. I didn’t take no stuff from prisoner, stoolie, or guard. As a result, I got it bad. I got the strap, the rubber hose, the club, the curses” (Blue, 2012, pp. 66–67).

## Introduction: The Evolving Practice of Corrections and the Grand Reforms

### LO 2.1 Explain the evolution of corrections and correctional institutions.

The history of corrections is riddled with the best of intentions and the worst of abuses. Correctional practices and facilities (e.g., galley slavery, transportation, jails and prisons, community corrections) were created, in part, to remove the “riffraff”—both poor and criminal—from urban streets or at least to control and shape them. Prisons and community corrections were also created to avoid the use of more violent or coercive responses to such folk. In this chapter, the focus is on exploring the history of the Western world’s correctional operations and then American corrections specifically and the recurring themes that run through this history and define it (see Figure 2.1). We also review the attributes of the seminal prison models of the early 1800s, known as the Pennsylvania prison system (including the Walnut Street Jail and the Western and Eastern Pennsylvania prisons) and the New York prison system (including the Auburn and Sing Sing prisons). We include the eyewitness accounts of the operation of such systems in their early years, as these are provided by *Gustave de Beaumont*, *Alexis de Tocqueville*, and *Dorothea Dix*.

Out of these two systems, the rampart for all American and many European prisons was constructed. As it became clear that neither prison model accomplished its multifaceted goals and that its operation was so distorted and horrific for inmates, changes were gradually made as new reform efforts ensued. The Elmira Prison in New York was perhaps the most ambitious of these efforts, in the latter part of the 1800s, which, in turn, set the stage for the later development of **correctional institutions**. Although the implementation of the reform ideals at Elmira is much critiqued, it certainly was much more humane than the convict-leasing system that operated at that time in the South. Folsom Prison in California in the 1940s, as described by inmate Wells, with its racial segregation, men laboring in rock quarries for lack of better work, and little programming, is representative of the Big Houses that preceded more concentrated efforts at rehabilitation that came with correctional institutions of the 1960s and 1970s. (More about these topics will be presented later in the chapter.)

What does become crystal clear from this review of the history of corrections in the United States is that there are several themes running through it. One such theme, of course, is the cyclical need for reform itself—but to what purpose is not always clear.

It is somewhat ironic that one of the best early analyses of themes and practices in American prisons and jails was completed by two French visitors to the United States—Gustave de Beaumont and Alexis de Tocqueville—who experienced the virtual birthing of prisons themselves while the country was in its relative infancy, in 1831 (Beaumont & Tocqueville, 1833/1964). Tocqueville, as a 26-year-old French magistrate, brought along his friend Beaumont, supposedly to study America’s newly minted prisons for 9 months. They ended up also observing the workings of its law, its government and political system, and its race relations, among other things (Damrosch, 2010; Tocqueville and Goldhammer,

#### Correctional institutions:

Institutions (prisons) that carefully classify inmates into treatment programs that address their needs and perceived deficiencies. They are also intended to be places where inmates can earn “good time” and eventual parole. Correctional institutions use the medical model to treat inmates, who are believed to be “sick” and in need of a treatment regimen, provided by the prison, that will address that sickness and hopefully “cure” the inmates so they might become productive members of society. (This term originally applied only to prisons but now can refer to jails as well.)

1835/2004). The irony is that as outsiders and social critics, Beaumont and Tocqueville could so clearly see what others, namely Americans, who were thought to have “invented prisons” and who worked in them, were blind to. In this chapter, we will try to “see” what those early French visitors observed about Western—and specifically American—correctional operations.

Few visitors to the United States—or residents for that matter—explored or commented on the early correctional experience for women, Dorothea Dix being a notable exception. (There will be more about her and her observations about the state of corrections in 1845.) Yet some of the themes that run through the practice of corrections apply to women and girls as well—but with a twist. Women have always represented only a small fraction of the correctional population in both prisons and jails, and the history of their experience with incarceration, as shaped by societal expectations of and for them, can be wholly different from that of men. As literal outsiders to what was the “norm” for inmates of prisons and jails and as a group whose rights and abilities were legally and socially controlled on the outside more than those of men and boys, women’s experience in corrections history is worth studying and will be more fully explored in Chapter 10.

What is clear from the history of Western corrections is that what was intended when prisons, jails, and reformatories were conceived and how they actually operated, then and now, were and are often two very different things (Rothman, 1980). As social critics ourselves, we can use the history of corrections to identify a series of “themes” that run through correctional practice, even up to today. Such themes will reinforce the tried, yet true, maxim “Those who cannot remember the past are condemned to repeat it” (Santayana, 1905, p. 284). Too often, we do not know or understand our history of corrections, and as a consequence, we are forever repeating it.

### Themes: Truths That Underlie Correctional Practice

There are some themes that have been almost eerily constant, vis-à-vis corrections, over the decades and even centuries. Some of them are obvious, such as the influence that money—or its lack—exerts over virtually all correctional policy decisions. Political sentiments and the desire to make changes also have had tremendous influence over the shape of corrections in the past. Other themes are less apparent but no less potent in their effect on correctional operations. For instance, there appears to be an evolving sense of compassion or humanity that, though not always clear in the short term, in practice, or in policy or statute, has underpinned reform-based decisions about corrections and its operation, at least in theory, throughout its history in the United States. The creation of the prison, with a philosophy of penitence (hence the penitentiary), was a grand reform itself, and as such, it represented, in theory at least, a major improvement over the brutality of punishment that characterized early English and European law and practice (Orland, 1995).

Some social critics do note, however, that the prison and the expanded use of other such social institutions also served as a *social control* mechanism to remove punishment from public view while making the state appear more just (Foucault, 1979; Welch, 2004). This is not to argue that such grand reforms in their idealistic form, such as prisons, were not primarily constructed out of the need to control, but rather, there were philanthropic, religious, and other forces aligned that also influenced their creation and design, if not so much their eventual and practical operation (Hirsch, 1992). Also of note, the social control function becomes most apparent when less powerful populations, such as people living in poverty, people of color, young people, and women and girls, are involved, as will be discussed in the following chapters.

Other than the influence of money and politics and a sense of greater compassion and humanity in correctional operation, the following themes are also apparent in corrections

■ FIGURE 2.1 Key Events in Corrections: Ancient Times to 1789

**Ancient Times**

Ancient Egyptian, Grecian, and Roman jails existed as the first type of correctional facility; both major and minor crimes could be punished severely

**Fifth Century**

Galley slavery was used by seafaring nations until the 18th century

**1553 AD**

First bridewell, or workhouse and poorhouse, developed in England

**Middle Ages**

(5th to the 15th century): Early forms of jails and prisons existed in sheriffs' houses (jails), castle keeps, dungeons, and monasteries

1080

**1080 AD**

The White Tower was completed inside the Tower of London

1553

1606

**1606 AD**

First official American jail built in Jamestown, Virginia

**1607 AD**

Transportation first used as a correctional sanction

1607

1692

**1692 AD**

William Penn instituted his Great Law, which de-emphasized the use of corporal and capital punishment

**1764 AD**

Cesare Beccaria wrote *On Crimes and Punishments*, proposing that punishment should be swift, appropriately severe, and certain

1764

1773

**1773 AD**

Newgate Prison in Simsbury, Connecticut, opened

**1775 AD**

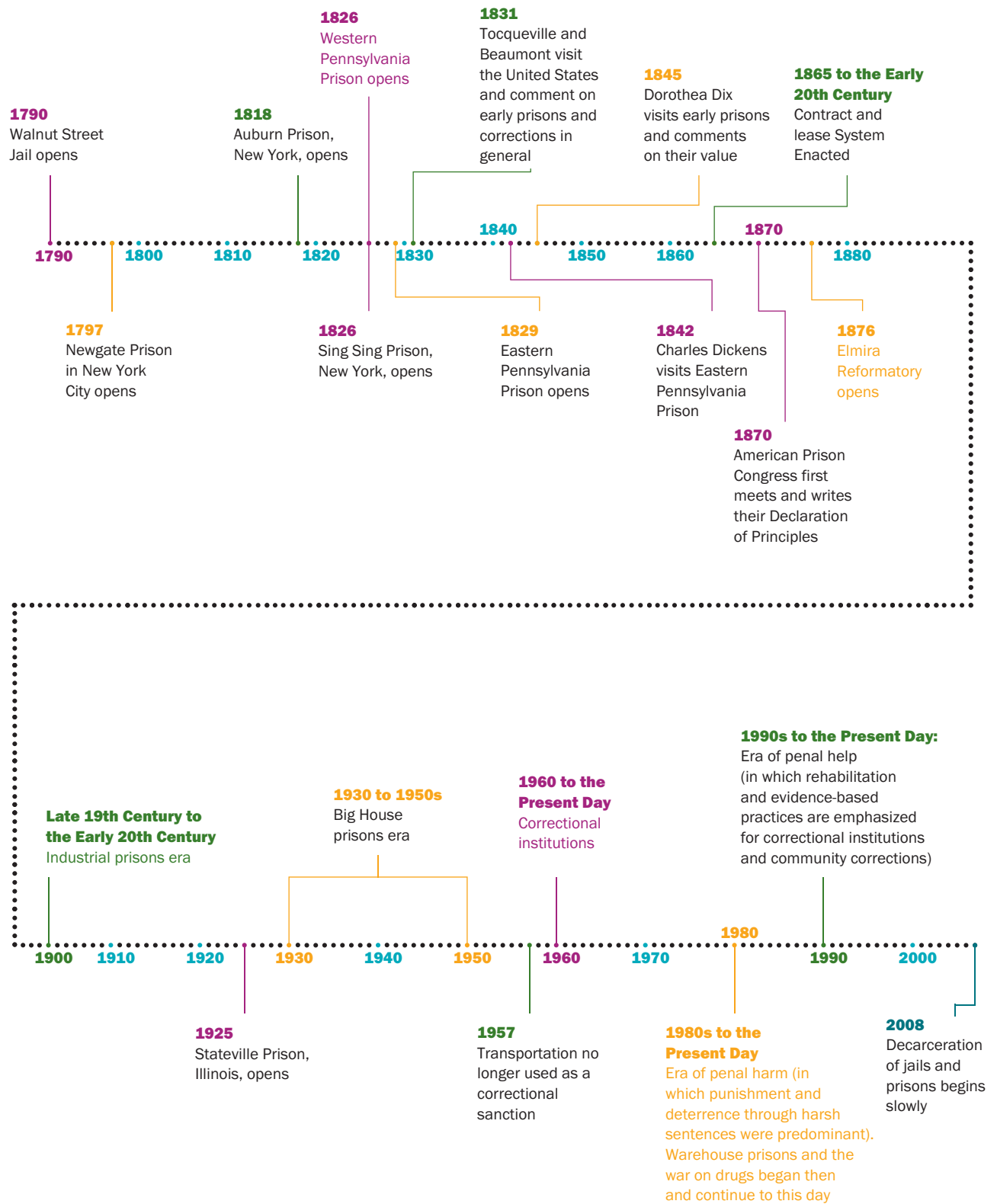
John Howard wrote *The State of the Prisons in England and Wales, With Preliminary Observations, and an Account of Some Foreign Prisons*, advocating for prison reform

1775

**1789 AD**

Jeremy Bentham proposed the building of a special type of prison, the panopticon

1789



history: the question of how to use labor and technology (which are hard to decouple from monetary considerations); a decided religious influence; the intersection of class, race, age, and gender in shaping one's experience in corrections; architecture as it is intermingled with supervision; methods of control; overcrowding; and, finally, the fact that good intentions do not always translate into effective practice. Although far from exhaustive, this list contains some of the most salient issues that become apparent streams of influence as one reviews the history of corrections. As discussed in Chapter 1, some of the larger philosophical (and political) issues, such as conceptions of right and wrong and whether it is best to engage in retribution or rehabilitation (or both, or neither, along with incapacitation, deterrence, and reintegration) using correctional sanctions, are also clearly associated with correctional change and operation.

## Early Punishments in Westernized Countries

### LO 2.2 Compare the different types of corrections used historically.

Human beings, throughout recorded history, have devised ingenious ways to punish their kind for real or perceived transgressions. Among tribal groups and in more developed civilizations, such punishment might include, among other tortures, whipping, branding, mutilation, drowning, suffocation, executions, and banishment (which, in remote areas, was tantamount to a death sentence). The extent of the punishment often depended on the wealth and status of the offended party and the offender. Those accused or found guilty who were richer were often allowed to make amends by recompensing the victim or their family, whereas those who were poorer and of lesser status were likely to suffer some sort of bodily punishment. Whatever the approach and for whatever reason, some sort of punishment was often called for as a means of balancing the scales of justice, whether to appease a god or gods or later Lady Justice.

As David Garland (1990) recounted, “Ancient societies and ‘primitive’ social groups often invested the penal process with a wholly religious meaning, so that punishment was understood as a necessary sacrifice to an aggrieved deity” (p. 203). As urbanization took hold, however, and transgressions were less tolerated among an increasingly diverse people, the ancients and their governing bodies were more likely to designate a structure as appropriate for holding people. For the most part, such buildings or other means of confining people were often used to ensure that the accused was held over for trial or sometimes just for punishment (Orland, 1975, p. 13). Fines, mutilation, drawing and quartering, and capital punishment were popular ways to handle those accused or convicted of crimes (Harris, 1973; Orland, 1975).

Although mutilation ultimately disappeared from English law, the brutality of Anglo-Saxon criminal punishment continued unabated into the eighteenth century. In the thirteenth century, offenders were commonly broken on the wheel for treason. A 1530 act authorized poisoners to be boiled alive. Burning was the penalty for high treason and heresy, as well as for murder of a husband by a wife or of a master by a servant. Unlike the punishment of boiling, that of burning remained lawful in England until 1790. In practice, and as a kindness, women were strangled before they were burned. The right hand was taken off for aggravated murder. Ordinary hangings were frequent, and drawing and quartering, where the hanged offender was publicly disemboweled and his still-beating heart held up to a cheering multitude, was not uncommon.

In addition, until the mid-19th century, English law permitted a variety of “summary” punishments. Both men and women (the latter until 1817) were flagellated



in public for minor offenses. For more serious misdemeanors, there was the pillory, which was not abolished in England until 1837. With his face protruding through its beams and his hands through the holes, the offender was helpless. Sometimes, he was nailed through the ears to the framework of the pillory with the hair of his head and beard shaved; occasionally, he was branded. Thereafter, some offenders were carried back to prison to endure additional tortures. (Orland, 1975, p. 15)

## The First Jails

Jails were the first type of correctional facility to develop, and in some form, they have existed for several thousand years. Whether pits, dungeons, or caves were used or the detainees were tied to trees, ancient peoples all had ways of holding accused criminals until judgments were made or implemented (Irwin, 1985; Mattick, 1974; Zupan, 1991).

According to Johnston (2009), punishment is referenced in a work written in 2000 BCE and edited by Confucius. The Old Testament of the Bible refers to the use of imprisonment from 2040 to 164 BC in Egypt, as well as in ancient Assyria and Babylon. Ancient Greece and Rome reserved harsher physical punishments for enslaved people, whereas citizens might be subjected to fines, exile, imprisonment, death, or some combination of these (Harris, 1973).

Ancient Roman society was a slave system. To punish wrongdoers, *capitis diminutio maxima*—the forfeiture of citizenship—was used. Criminals became penal slaves. Doomed men were sent to hard labor in the Carrara marble quarries, metal mines, and sulphur pits. The most common punishment was whipping—and in the case of free men, it was accompanied by the shaving of the head, for the shorn head was the mark of the slave. (Harris, 1973, p. 14)

Early versions of *gaols* (or jails) and prisons existed in English castle keeps and dungeons and Catholic monasteries. These prisons and jails (not always distinguishable in form or function) held political adversaries and common folk, either as a way to punish them or incapacitate them or to hold them over for judgment by a secular or religious authority. Sometimes, people might be held as a means of extorting a fine (Johnston, 2009). The use of these early forms of jail was reportedly widespread in England, even a thousand years ago. By the ninth century, Alfred the Great had legally mandated that imprisonment might be used to punish (Irwin, 1985). King Henry II, in 1166, required that where no gaols existed in English counties, they should be built (Zupan, 1991) “in walled towns and royal castles” (Orland, 1975, pp. 15–16), but only for the purpose of holding the accused for trial. In Elizabethan England, innkeepers made a profit by using their facilities as gaols.

Such imprisonment in these or other gaols was paid for by the prisoners or through their work. Those who were wealthy could pay for more comfortable accommodations while incarcerated. “When the Marquis de Sade was confined in the Bastille, he brought his own furnishings and paintings, his library, a live-in valet, and two dogs. His wife brought him gourmet food” (Johnston, 2009, p. 12S). The Catholic Church maintained its own jails and prison-like facilities across the European continent, administered by bishops or other church officials.

In fact, the Catholic Church’s influence on the development of westernized corrections was intense in the Middle Ages (medieval Europe from the 5th to the 15th centuries) and might be felt even today. As a means of shoring up its power base vis-à-vis feudal and medieval lords and kings, the Catholic Church maintained not only its own forms of prisons and jails but also its own ecclesiastical courts (Garland, 1990). Although proscribed from drawing blood, except during the Inquisition, the church often turned its charges over to secular authorities for physical punishment. But while in their care and in their monasteries for punishment, the Catholic Church required “solitude, reduced diet, and reflection,



## In Focus 2.1

### THE TOWER OF LONDON



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**Photo 2.1** The infamous White Tower inside the Tower of London complex.

There are few international iconic prison images as prominent as that of the Tower of London, located on the River Thames in the center of London, England. Begun after 1066, when William the Conqueror captured the Saxon city of London in the Norman invasion, the centerpiece of this castle complex, the White Tower, was completed in roughly 1080 (Impey & Parnell, 2011). The Tower of London today has a number of buildings, including the White Tower, along with several towers and gates on its double walls. At one time, it included a moat, which has since been filled in. Sited in old London, today it is surrounded by modern buildings and near-ancient structures alike. Over the centuries, it has been added to by various kings and used to defend the city, as a royal palace and a symbol of power for royalty, as a mint for royal coinage, as an armory, as a treasury for the royal jewels, as a conservator of the King's Court's records, as a kind of zoo for exotic animals gifted to the royalty, as a tourist attraction for centuries, and, for our purposes, as a prison and a place of execution.

Its role as a prison began early in 1100, lasting until the 1820s, and then it was a prison again during World War II (Impey & Parnell, 2011). For the most part, there were no separate prison quarters for its mostly exalted prisoners, other than a shed constructed in 1687 for prison soldiers. Therefore, political and other prisoners were accommodated in whatever quarters were available. For instance, Anne Boleyn, the second wife of Henry VIII, was



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**Photo 2.2** Side view of the Tower of London as it appears today.

married at the tower; executed there 3 years later, in 1526; and buried there under its chapel. The young Princess Elizabeth (Anne's daughter) was also held at the tower by her half sister, Queen Mary I, until Elizabeth attained the throne as Elizabeth I. Sir Thomas More spent a year (1534) imprisoned in the tower before his execution, and Sir Walter Raleigh spent 13 years (1603–1616) imprisoned in the tower; both men were imprisoned for allegedly committing treason. Notably, William Penn, discussed in other parts of this book, was imprisoned at the tower for 7 months in 1668–1669 for pamphleteering about his Quaker religion. Their incarceration in the tower, as well as many others of rank and wealth, was not as hard as it would have been if they had been sent to public prisons of the time—and even sometimes included luxurious accommodations and servants. Torture did happen at the tower (the use of the rack and manacles, etc.), but its use was relatively rare, as at times, though not always, it had to be sanctioned by a special council. Executions occurred inside the walls of the Tower of London, but most occurred on nearby Tower Hill or elsewhere near the complex.

### Discussion Questions

1. Why do you think the Tower of London has survived so long?
2. If you were going to be held in a prison or jail, would you prefer the “tower” or more modern correctional institutions? Justify your answer.

sometimes for extended periods of time” (Johnston, 2009, p. 14S). Centuries later, the first prisons in the United States and Europe, then heavily influenced by Quakers and Protestant denominations in the states, copied the Catholics’ monastic emphasis on silence, placing prisoners in small, austere rooms where their penitence might be reflected upon—practices and architecture that, to some extent, still resonate today.

## Galley Slavery

Another form of “corrections,” **galley slavery**, was used sparingly by the ancient Greeks and Romans but more regularly in the late Middle Ages in Europe and England, and it stayed in use until roughly the 1700s. Under Elizabeth I, in 1602, a sentence to galley servitude was decreed as an alternative to the death sentence (Orland, 1975). Pope Pius VI (who was pope from 1775 to 1799) also reportedly used it (Johnston, 2009, p. 12S). Galley slavery was used as a sentence for crimes as a means of removing poor people from the streets. It also served the purpose of providing the requisite labor—rowing—needed to propel ships for seafaring nations interested in engagement in trade and warfare. For instance, galley slaves were reportedly used by Columbus (Johnston, 2009). The enslaved people were required to row the boat until they collapsed from exhaustion, hunger, or disease; often, they sat in their own excrement (Welch, 2004). Under Pius VI, galley slaves were entitled to bread each day, and their sentences ranged from 3 years to life (Johnston, 2009). Although we do not have detailed records of how such a sentence was carried out, and we can be sure that its implementation varied to some degree from vessel to vessel, the reports that do exist indicate that galley slavery was essentially a sentence to death. Galley slavery ended when the labor was no longer needed on ships because of the technological development of sails.

**Galley slavery:** A sentence forcing the convict to work as a rower on a ship.

## Poverty and Bridewells, Debtors’ Prisons, and Houses of Correction

However, galley slavery could absorb only a small number of poor people, who began to congregate in towns and cities in the Middle Ages. Feudalism—and the order it imposed—was disintegrating; wars (particularly the Crusades prosecuted by the Catholic Church) and intermittent plagues did claim thousands of lives, but populations were stabilizing and increasing, and there were not enough jobs, housing, or food for people living in poverty. As the cities became more urbanized and as more and more poor people congregated in them, governmental entities responded in an increasingly severe fashion to poor people’s demands for resources (Irwin, 1985). These responses were manifested in the harsh repression of dissent, increased use of death sentences and other punishments as deterrence and spectacle, the increased use of jailing to guarantee the appearance of the accused at trial, the development of poorhouses or bridewells and debtors’ prisons, and the use of “transportation,” discussed later (Foucault, 1979; Irwin, 1985).

Eighteenth-century England saw the number of crimes subject to capital punishment increase to as many as 225, for such offenses as rioting over wages or food (the Riot Act) or for “blacking” one’s face so as to be camouflaged when killing deer in the king’s or a lord’s forest (the Black Act) (Ignatieff, 1978, p. 16). New laws regarding forgery resulted in two thirds of those convicted of it being executed. Rather than impose the most serious sentence for many of these crimes, however, judges would often opt for the use of transportation, whipping, or branding. Juries would also balk at imposing the death sentence for a relatively minor offense and so would sometimes value property that was stolen at less than it was



**Photo 2.3** Drawing of the inside of a bridewell in London (1808–1811). Bridewells helped criminalize social problems, like poverty.

**Bridewells:** Workhouses constructed to hold and whip or otherwise punish “beggars, prostitutes, and nightwalkers” and later to serve as places of detention.

worth in order to ensure a lesser sentence for the defendant. In the latter part of the 1700s, a sentence of imprisonment might be used in lieu of, or in addition to, these other punishments.

**Bridewells**, or buildings constructed to hold and whip “beggars, prostitutes, and nightwalkers” (Orland, 1975, p. 16) and later to serve as places of detention, filled this need; their use began in London in 1553 (Kerle, 2003). The name came from the first such institution, which was developed at Bishop Ridley’s place at St. Bridget’s Well; all subsequent similar facilities were known as bridewells.

Bridewells were also workhouses, used as leverage to extract fines or repayment of debt or the labor to replace them. Such facilities did not separate people by gender or age or criminal and noncriminal status, nor were their inmates fed and clothed

properly, and sanitary conditions were not maintained. As a consequence of these circumstances, bridewells were dangerous and diseased places where if one could not pay a “fee” for food, clothing, or release, the inmate—and possibly their family—might be doomed (Orland, 1975; Pugh, 1968). The use of bridewells spread throughout Europe and the British colonies, as it provided a means of removing poor people and displaced people from the streets while also making a profit (Kerle, 2003). Such a profit was made by the wardens, keepers, and gaolers—the administrators of bridewells, houses of correction (each county in England was authorized to build one in 1609), and gaols—who, though unpaid, lobbied for the job, as it was so lucrative. They made money by extracting it from their inmates. If an inmate could not pay, they might be left to starve in filth or be tortured or murdered by the keeper for nonpayment (Orland, 1975, p. 17).

Notably, being sent to debtors’ prison was something that still occurred even after the American Revolution. In fact, James Wilson, a signer of the Constitution (and reportedly one of its main architects) and a Supreme Court justice, was imprisoned in such a place twice while serving on the Court. He had speculated on land to the west and lost a fortune in the process (Davis, 2008).

## Transportation

Yet another means of “corrections” that was in use by Europeans for roughly 350 years, from the founding of the Virginia Colony in 1607, was **transportation** (Feeley, 1991). Also used to rid cities and towns of people who were chronically poor or people who were criminally inclined, transportation, as with bridewells and gaols, involved a form of privatized corrections, whereby those sentenced to transportation were sold to a ship’s captain. He would, in turn, sell their labor as indentured servants, usually to do agricultural work, to colonials in America (Maryland, Virginia, and Georgia were partially populated through this method) and to white settlers in Australia. Transportation ended in the American colonies with the Revolutionary War but was practiced by France to populate Devil’s Island in French Guiana until 1953 (Welch, 2004). In America, transportation provided needed labor to colonies desperate for it. It is believed that about 50,000 convicts were deposited on American shores from English gaols. If they survived their servitude, which

**Transportation:** A sentence exiling convicts and transporting them to a penal colony.



ranged from 1 to 5 years, they became free and might be given tools or even land to make their way in the New World (Orland, 1975, p. 18).

One of the most well-documented penal colonies was **Norfolk Island**, 1,000 miles off the Australian coast. Established in 1788 as a place designated for prisoners from England and Australia, it was regarded as a brutal and violent island prison where inmates were poorly fed, clothed, and housed and were mistreated by staff and their fellow inmates (Morris, 2002). Morris (2002), in his semifictional account of efforts by *Alexander Maconochie* to reform Norfolk, noted that Maconochie, a former naval captain, asked to be transferred to Norfolk, usually an undesirable placement, so he could put into practice some ideas he had about prison reform. He served as the warden there from 1840 to 1844. What was true in this story was that “in four years, Maconochie transformed what was one of the most brutal convict settlements in history into a controlled, stable, and productive environment that achieved such success that upon release his prisoners came to be called ‘Maconochie’s Gentlemen’” (Morris, 2002, book jacket). Maconochie’s ideas included the belief that inmates should be rewarded for good behavior through a system of marks, which could lead to privileges and early release; that they should be treated with respect; and that they should be adequately fed and housed. Such revolutionary ideas, for their time, elicited alarm from Maconochie’s superiors, and he was removed from his position after only 4 years. His ideas, however, were adopted decades later when the concepts of *good time* and *parole* were developed in Ireland and the United States. In addition, his ideas about adequately feeding and clothing inmates were held in common by reformers who came before him, such as John Howard and William Penn, and those who came after him, such as Dorothea Dix.

**Norfolk Island:** An English penal colony, 1,000 miles off the Australian coast, regarded as a brutal and violent island prison where inmates were poorly fed, clothed, and housed and were mistreated by staff and their fellow inmates.

## Enlightenment—Paradigm Shift

**LO 2.3** Identify some of the key Enlightenment thinkers, their ideas, and how they changed corrections.

As noted in Chapter 1, the Enlightenment period, lasting roughly from the 17th through the 18th centuries in England, Europe, and America, spelled major changes in thought about crime and corrections. But then, it was a time of paradigmatic shifts in many aspects of the Western experience, as societies became more secular and open. Becoming a more secular culture meant that there was more focus on humans on Earth, rather than in the afterlife, and as a consequence, the arts, sciences, and philosophy flourished. In such periods of human history, creativity manifests itself in innovations in all areas of experience; the orthodoxy in thought and practice is often challenged and sometimes overthrown in favor of new ideas and even radical ways of doing things (Davis, 2008). Whether in the sciences with the Englishman Isaac Newton (1643–1727), philosophy and rationality with the Englishwoman Anne Viscountess Conway (1631–1679), feminist philosophy with the Englishwoman Damaris Cudworth Masham (1659–1708), philosophy and history with the Scotsman David Hume (1711–1776), literature and philosophy with the Frenchman Voltaire (1694–1778), literature and philosophy with the Briton Mary Wollstonecraft (1759–1797), or the Founding Fathers of the United States (e.g., Samuel Adams, James Madison, Benjamin Franklin, Thomas Paine, Thomas Jefferson), new ideas and beliefs were proposed and explored in every sphere of the intellectual enterprise (Duran, 1996; Frankel, 1996). Certainly, the writings of John Locke (1632–1704) and his conception of liberty and human rights provided the philosophical underpinnings for the Declaration of Independence, as penned by Thomas Jefferson. As a result of the Enlightenment, the French Revolution, beginning in 1789, was also about rejecting one form of government—the absolute monarchy—for something that was to be more democratic and liberty based.



## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a Tory Loyalist (to the Crown of England, King George III) in the Connecticut colony in 1777. Because you are an outspoken critic of the American Revolution, you are imprisoned in the Newgate Prison in Simsbury, Connecticut, for the duration of the war. Provisions in the prison are horrid, with minimal food and dark, dank conditions in the mine shaft; however, the people guarding you are decent and do what they can to make you and the other

prisoners comfortable. Because of the distraction of the war, however, security is not as tight as it might be, and you see an opportunity to escape. What do you think you would do? If you escaped, would you try to fight on the side of England? What will be the consequences for your family (you have a wife and four children at home) and your family business (you are a tea manufacturer) should you do this? What do you think John Locke would recommend?

Such changes in worldviews or paradigms—as Thomas Kuhn (1962) explained in his well-known work *The Structure of Scientific Revolutions*, which discusses nonlinear shifts in scientific theory—usually come after evidence mounts, and the holes in old ways of perceiving become all too apparent. The old theory simply cannot accommodate the new evidence. Those who experienced the Enlightenment period, much like reformers and activists of the Progressive Era (1880s to 1920s), the civil rights era (1950s and 1960s), the women’s movement (1970s), and the LGBTQ+ and #MeToo movements (1990s and 2010s) in the United States that were to follow centuries later, experienced a paradigm shift regarding crime and justice. To some it may have appeared as if, like with Spock in an episode of the original *Star Trek* television show, magic spores had fundamentally reshaped thought and suffused it with kind regard, if not love, for others. In actuality, humans seemed to realize that change in crime policy and practice was called for, and they set about devising ways to accomplish it.

### John Howard

*John Howard* (1726–1790) was one such person who acted as a change agent. As a sheriff of Bedford in England and as a man who had personally experienced incarceration as a prisoner of war himself (held captive by French privateers), he was *enlightened* enough to “see” that gaols in England and Europe should be different, and he spent the remainder of his life trying to reform them (Howard, 1775/2000; Johnston, 2009). Howard’s genius was his main insight regarding corrections: that corrections should not be privatized in the sense that jailers were “paid” by inmates a fee for their food, clothing, and housing (an inhumane and often illogical practice, as most who were incarcerated were desperately poor, a circumstance that explained the incarceration of many in the first place). Howard believed that the state or government had a responsibility to provide sanitary and separate conditions and decent food and water for those they incarcerated. His message of reform included these central tenets:

1. The fee system for jails should be ended.
2. Inmates should be separated by gender and offense. (Single celling would be optimal.)
3. Inmates should be provided with sanitary conditions and clean and healthful food and water.

4. Staff should serve as a moral model for inmates.
5. Jails and prisons should have a set of standards and be independently inspected to ensure these standards are maintained.

His humanity was apparent, in that he promoted these ideas in England and all over the European continent during his lifetime. He was able to do so because he inherited money from his father, his sister, and his grandmother and used it to improve the lives of the tenants on his land and the inmates in correctional facilities. His major written work, *The State of the Prisons in England and Wales, With Preliminary Observations, and an Account of Some Foreign Prisons* (Howard, 1775/2000), detailed the horror that was experienced in the filthy and torturous gaols of England and Europe, noting that despite the fact that there were 200 crimes for which capital punishment might be prescribed, far more inmates died from diseases contracted while incarcerated.

Howard (1775/2000) found that gaol fever was widespread in all kinds of correctional institutions of the time: bridewells, gaols, debtors' prisons, and houses of correction. Moreover, there was little food or work to be had in many of these facilities. Ironically, Howard eventually died from typhus, also known as gaol fever, after touring several jails and prisons in Eastern Europe, specifically the prisons of tsarist Russia.



## In Focus 2.2

### MODERN-DAY JOHN HOWARD—DR. KEN KERLE

The Corrections Section of the Academy of Criminal Justice Sciences (ACJS) established the John Howard Award in 2009 and gave the first one to a modern-day John Howard, Ken Kerle (retired managing editor of *American Jails* magazine). Kerle has spent much of his adult life trying to improve jail standards, both in the United States and abroad. As part of that effort, he has visited hundreds of jails in this country and around the world. He has advised countless jail managers about how they might improve their operations. He has increased the transmission of information and the level of discussion between academicians and practitioners

by encouraging the publication of scholars' work in *American Jails* magazine and their presentations at the American Jails Association meetings and by urging practitioners to attend ACJS meetings. Kerle (2003) also published a book on jails titled *Exploring Jail Operations*.

#### Discussion Question

1. Knowing how much the old and the new John Howards of this world accomplish, what are the things that hold you back from becoming such a person yourself?

## Bentham and Beccaria

As mentioned in Chapter 1, the philosophers and reformers Jeremy Bentham (1748–1832) in England and Cesare Beccaria (1738–1794) in Italy, separately but both during the Enlightenment period, decried the harsh punishment meted out for relatively minor offenses in their respective countries and, as a consequence, emphasized *certainty* over the severity and celerity components of the deterrence theory they independently developed. Beccaria (1764/1963), in his classic work *On Crimes and Punishments*, wrote,

In order that punishment should not be an act of violence perpetrated by one or many upon a private citizen, it is essential that it should be public, speedy,

necessary, the minimum possible in the given circumstances, proportionate to the crime, and determined by the law. (p. 113)

He argued that knowledge, as that provided by the sciences and enlightenment, was the only effective antidote to “foul-mouthed ignorance” (p. 105).

Bentham (1789/1969) also proposed, in his *Plan of Construction of a Panopticon Penitentiary House*—though the funding of it was not approved by King George III—the building of a special type of prison. As per Bentham, the building of a private prison-like structure—the **panopticon**, which he would operate—that ingeniously melded the ideas of improved supervision with architecture (because of its rounded, open, and unobstructed views) would greatly enhance the supervision of inmates. Such a recognition of the benefits of some architectural styles as complementary to enhanced supervision was indeed prescient, as it presaged modern jail and prison architecture. His proposed panopticon would be circular, with two tiers of cells on the outside and a guard tower in its center, with the central area also topped by a large skylight. The skylight and the correct angling of the tower were to ensure that the guard was able to observe all inmate behavior in the cells, though because of a difference of level and the use of blinds, the keeper would be invisible to the inmates. A chapel would also be located in the center of the rounded structure. The cells were to be airy and large enough to accommodate the whole lives of the inmates in that the cells were to “serve all purposes: work, sleep, meals, punishment, devotion” (Bentham, 1811/2003, p. 194). Somehow, Bentham noted in his plan, without elaboration, that men and women were to be invisible to each other. He did not call for complete separation of all inmates, however, which becomes important when discussing the Pennsylvania and New York prisons, but he did assert that the groups of inmates allowed to interact should be small, including only two to four persons (Bentham, 1811/2003, p. 195).

As an avowed admirer of John Howard, Bentham proposed that his panopticon penitentiary would include all of the reforms proposed by Howard and many more. Bentham (1811/2003) promised that inmates would be well fed, fully clothed, supplied with beds, supplied with warmth and light, kept from “strong or spirituous liquors” (p. 199), have their spiri-

tual and medical needs fulfilled, be provided with opportunities for labor and education (“to convert the prison into a school” [p. 199]), “share in the produce” (p. 200) to incentivize the labor, be taught trades so that they could survive once released, and be helped to save for old age (pp. 199–200). He would also personally pay a fine for every escape, insure inmates’ lives to prevent their deaths, and submit regular reports to the Court of the King’s Bench on the status of the prison’s operation (pp. 199–200). Moreover, he proposed that the prison would be open in many respects, not just to dignitaries but to regular citizens, and daily, as a means of preventing abuse that might occur in secret. Bentham also recommended the construction of his prisons on a large scale across England, such that one would be built every 30 miles, or a good day’s walk by a man. He planned, as he wrote in his 1830 diatribe against King George III,

**Panopticon:** A prison design in which multitiered cells are built around a hub so that correctional staff can view all inmates without being observed.

Underwood Archives/Contributor/Getty Images



**Photo 2.4** Stateville Prison in Illinois was built as a panopticon, with rounded architecture and a central tower for officers. Panopticons were devised to enhance the supervision of inmates but may have been more effective at enhancing the observation of officers by inmates.

wryly titled “History of the War Between Jeremy Bentham and George the Third—by One of the Belligerents,” that “but for George the Third, all the prisoners in England would, years ago, have been under my management. But for George the Third, all the paupers in the country would, long ago, have been under my management” (Bentham, 1811/2003, p. 195).

## William Penn

William Penn (1644–1718), a prominent Pennsylvania Colony governor and Quaker, was similarly influenced by Enlightenment thinking (though with the Quaker influence, his views were not so secular). Much like Bentham and Beccaria, Penn was not a fan of the harsh punishments, even executions, for relatively minor offenses that were meted out during his lifetime. While in England and as a result of his defense of religious freedom and practice, he was incarcerated in the local jails on more than one occasion—and even in the Tower of London in 1669—for his promotion of the Quaker religion and defiance of the English Crown. He was freed only because of his wealth and connections (Penn, 1679/1981). As a consequence, when he had the power to change the law and its protections and reduce the severity of punishments, he did so. Many years later (in 1682), in Pennsylvania, he proposed and instituted his **Great Law**, which was based on Quaker principles and deemphasized the use of corporal and capital punishment for all crimes but the most serious (Clear, Cole, & Reisig, 2011; Johnston, 2009; Zupan, 1991). His reforms substituted fines and jail time for corporal punishment. He promoted Pennsylvania as a haven for Quakers, who were persecuted in England and Europe generally, and for a number of other religious minorities (Penn, 1679/1981). His ideas about juries, civil liberties, religious freedom, and the necessity of amending constitutions—so they are adaptable to changing times—influenced a number of American revolutionaries, including Benjamin Franklin and Thomas Paine.

**Great Law:** William Penn’s idea, based on Quaker principles, deemphasized the use of corporal and capital punishment for all crimes but the most serious.

Many of Penn’s contemporaries were not of the same frame of mind, however, and after his death, the Great Law was repealed, and harsher punishments were again instituted in Pennsylvania, much as they existed in the rest of the colonies (Johnston, 2009; Welch, 2004). But the mark of his influence lived on in the development of some of America’s first prisons.

Much like Howard and Bentham, Penn was interested in reforming corrections, but he was particularly influenced by his Quaker sentiments regarding nonviolence and the value of quiet contemplation. The early American prisons known as the Pennsylvania model prisons—the Walnut Street Jail (1790) in Philadelphia, Western Pennsylvania Prison (1826) in Pittsburgh, and Eastern Pennsylvania Prison (1829) in Philadelphia—incorporated these ideas (Johnston, 2009). Even the New York prison system (Auburn and Sing Sing), often juxtaposed with Pennsylvania prisons on the basis of popular depiction by historians (see Beaumont and Tocqueville, 1833/1964), included contemplation time for inmates and a plan for single cells for inmates that reflected the same belief in the need for some solitude.

## Colonial Jails and Prisons

### LO 2.4 Identify the housing and punishments used in prisons and jails in colonial times.

The first jail in America was built in Jamestown, Virginia, soon after the colony’s founding in 1606 (Burns, 1975; Zupan, 1991). Massachusetts built a jail in Boston in 1635, and Maryland built a jail for the colony in 1662 (Roberts, 1997). The oldest standing jail in the United States was built in the late 1600s and is located in Barnstable, Massachusetts (Library of Congress, 2010). It was used by the sheriff to hold both men and women, along with his family, in upstairs, basement, and barn rooms. Men and women were held in this and other jails like it, mostly before they were tried for both serious and minor offenses, as punishment for offenses, or to ensure that they were present for their own executions.



Such an arrangement as this—holding people in homes, inns, or other structures that were not originally designated or constructed as jails—was not uncommon in early colonial towns (Goldfarb, 1975; Irwin, 1985; Kerle, 2003). As in England, inmates of these early and colonial jails were required to pay a “fee” for their upkeep (the same fee system that John Howard opposed). Those who were wealthier could more easily buy their way out of incarceration, or if that was not possible because of the nature of the offense, they could at least ensure that they had more luxurious accommodations (Zupan, 1991). Even when jailers were paid a certain amount to feed and clothe inmates, they might be disinclined to do so, being that what they saved by not taking care of their charges they were able to keep (Zupan, 1991). As a result, inmates of early American jails were sometimes malnourished or starving. Moreover, in the larger facilities, they were crammed into unsanitary rooms, often without regard to separation by age, gender, or offense, conditions that also led to disease and early death. Nonetheless, Irwin (1985) did note that generally Americans fared better in colonial jails than their English and European cousins did in their own, as the arrangements were less formal and restrictive in the American jails and were more like rooming houses.

As white people migrated across North America, the early western jails were much like their earlier eastern and colonial cousins, with makeshift structures and cobbled-together supervision serving as a means of holding the accused over for trial (Moynihan, 2002). In post-Civil War midwestern cities, disconnected outlaw gangs (such as the Jesse James gang) were treated in a harsh manner. Some communities even built *rotary jails*, which were like human squirrel cages. Inside a secure building, these rotating steel cages, segmented into small “pie-shaped cells,” were secured to the floor and could be spun at will by the sheriff (Goldfarb, 1975, p. 11).

Of course, without prisons in existence per se (we will discuss the versions of such institutions that did exist shortly), most punishments for crimes constituted relatively short terms in jails; public shaming (as in the stocks); physical punishments, such as flogging or the pillory; or banishment. Executions were also carried out, usually but not always for the most horrific of crimes, such as murder or rape, though in colonial America, many more crimes qualified for this punishment (Zupan, 1991). As in Europe and England at this time, those who were poorer or enslaved were more likely to experience the harshest punishments (Irwin, 1985; Zupan, 1991). Similar to Europe and England in this era, jails also held people with mental illnesses along with debtors, drifters, transients, the inebriated, runaway slaves or servants, and the criminally involved (usually pretrial) (Cornelius, 2007).

Although the Walnut Street Jail, a portion of which was converted to a prison, is often cited as the first prison in the world, there were, as this recounting of history demonstrates, many

precursors that were arguably “prisons” as well. One such facility, which also illustrates the makeshift nature of early prisons, was **Newgate Prison** in Simsbury, Connecticut (named after the Newgate Prison in London). According to Phelps (1860/1996), this early colonial prison started as a copper mine, and during its 54 years of operation (from 1773 to 1827), some 800 inmates passed through its doors. The mine was originally worked in 1705, and one third of the taxes it paid to the town of Simsbury at that time was used to support Yale College (p. 15). “Burglary, robbery, and counterfeiting were punished for the first offense with imprisonment not exceeding ten years; second offence for life” (p. 26). Later,

**Newgate Prison (Simsbury, Connecticut):** An early colonial prison (1773–1827) that started as a copper mine. Many of its inmates would work the mine during the day and sleep in it at night. During the Revolutionary War, some Loyalists to the English Crown were held here.



Wikimedia Commons, public domain

**Photo 2.5** Newgate Prison, a working copper mine, served as an early colonial prison.



those loyal to the English Crown during the American Revolution—or Tories—were held at Newgate as well. Punishments by the “keeper of the prison” could range from shackles and fetters as restraints to “moderate whipping, not to exceed ten stripes” (p. 26). The inmates of Newgate Prison were held—stored, really—in the bowels of the mine during the evening (by themselves and with no supervision) and during the day were forced to work the mine or were allowed to come to the surface to labor around the facility and in the community. Over the course of the history of this facility, there were several escapes, a number of riots, and the burning of the topside buildings by its inmates. Early versions of prisons also existed in other countries.

## Early Modern Prisons

**LO 2.5** Evaluate the two predominant prison systems of the early 1800s and their strengths and weaknesses.

The early American prisons were known as the Pennsylvania model prisons—the Walnut Street Jail (1790) in Philadelphia, Western Pennsylvania Prison (1826) in Pittsburgh, and Eastern Pennsylvania Prison (1829) in Philadelphia—as well as the New York prison system (Auburn and Sing Sing).

### The Walnut Street Jail

The **Walnut Street Jail** was originally constructed in 1773 in Philadelphia, Pennsylvania, and operated as a typical local jail of the time: holding pretrial detainees and minor offenders; failing to separate by gender, age, or offense; using the fee system, which penalized people living in poverty and led to the near starvation of some; and offering better accommodations and even access to liquor and sex to those who could pay for it (Zupan, 1991). It was remodeled, however, in 1790 and reconceptualized so that many correctional scholars, though not all, regard it as the first prison.

The remodeled cell house was a frame construction and was built for the inmates of the “prison” section of the jail, with separate cells for each inmate. On the basis of the reforms that John Howard (and later Bentham and Fry) had envisioned for English and European jails, several reforms were instituted in this prison: The fee system was dropped, inmates were adequately clothed and fed regardless of their ability to pay, and they were separated by gender and offense. Children were not incarcerated in the prison, and debtors were separated from convicted felons. Although inmates were to live in isolated cells (to avoid “contaminating” one another), some work requirements brought them together. In addition, medical care was provided, and attendance at religious services was required. The availability of alcohol and access to members of the opposite sex and prostitutes was stopped.

The impetus for this philosophical change came from the reform efforts of the Philadelphia Society for Alleviating the Miseries of Public Prisons (or the Philadelphia Prison Society, currently known as the Pennsylvania Prison Society), led by *Dr. Benjamin Rush*, who was a physician, reformer, statesman, and signatory of the Declaration of Independence. Rush agitated for laws to improve the jail’s conditions of confinement and a different belief about correctional institutions—namely,

**Walnut Street Jail:** Originally constructed in 1773 in Philadelphia, Pennsylvania, and remodeled in 1790 into the first full-fledged prison. The fee system was dropped; inmates were adequately clothed and fed, regardless of their ability to pay; and they were separated by gender and offense. However, because of problems in implementation, by 1816, the prison was reportedly operating no better than before the reform and remodel.



**Photo 2.6** Drawing of the Walnut Street Jail (circa 1799).

J. N. Pheips Stokes, Collection of American Historical Prints

that they could be used to reform their inmates (Nagel, 1973; Roberts, 1997). Ideally, the Walnut Street Jail was to operate on the basis of the religious beliefs of the Quakers, with their emphasis on the reflective study of the Bible and abhorrence of violence, which was so prevalent in other correctional entities. In 1789, the General Assembly of Pennsylvania enacted legislation based on these recommendations, and the Pennsylvania system was born (Nagel, 1973).

The Walnut Street Jail, as a prison, was also an entity with a philosophy of penitence, which, it was hoped, would lead to reform and redemption. This philosophy was combined with an architectural arrangement shaped to facilitate it by ensuring that inmates were mostly in solitary cells. As John W. Roberts (1997) aptly noted, the reason the Walnut Street Jail's new wing was the first real prison, as opposed to the other prisons such as Newgate of Connecticut that preceded it or some of the early European prisons, was "because it carried out incarceration as punishment, implemented a rudimentary classification system, featured individual cells, and was intended to provide a place for offenders to do penance—hence the term 'penitentiary'" (p. 26).

But in reality, the Walnut Street Jail soon became crowded, reportedly housing four times its capacity. As Johnston (2010) noted, "At one point 30 to 40 inmates were sleeping on blankets on the floor of rooms [which were] 18 feet square" (p. 13). Moreover, the institutional industry buildings that provided work for inmates burned down, leading to idleness, and by 1816, the Walnut Street Jail (prison) was little different from what it had been before the reforms (Harris, 1973; Zupan, 1991).

As Beaumont and Tocqueville (1833/1964) commented in 1831, after visiting and analyzing several prisons and jails in the United States, the implementation of the Walnut Street Jail had "two principal faults: it corrupted by contamination those who worked together. It corrupted by indolence, the individuals who were plunged into solitude" (p. 38).

### The Pennsylvania Prison Model (Separate System)

The Western Pennsylvania Prison (1821) was built in Pittsburgh, followed by the Eastern Pennsylvania Prison (1829) in Philadelphia, which was to replace the Walnut Street Jail (Nagel, 1973). The Western Pennsylvania Prison, built 8 years before Eastern, is little remarked upon or studied in comparison with Eastern. It was devised to operate in a solitary and separate fashion for inmates. Even labor was to be prohibited, as it was thought that this might interfere with the ability of the criminal to reflect and feel remorse for their crime (Hirsch, 1992). Despite the lessons learned from Auburn Prison (part of the New York system, which we will describe further on)—namely, that complete separation without labor can be injurious to the person and expensive for the state to maintain, a point made by Tocqueville and Beaumont—Western Pennsylvania Prison was built to hold inmates in complete solitary confinement (hence the use of the term *separate system*), with no labor, for the full span of their sentences. However, as Beaumont and Tocqueville (1833/1964) remarked about Western Pennsylvania Prison, reducing all communication and thus contamination, in the authors' view, was almost impossible at this prison.

As a consequence of these problems of architecture and operation, the Western Pennsylvania Prison was abandoned as a model, and the Eastern Pennsylvania Prison came to epitomize the **Pennsylvania prison system**, as opposed to the New York system of building and operating prisons. At Eastern Pennsylvania Prison, known as "Cherry Hill" for much of its 150 years of operation, the idea that inmates could be contaminated or corrupted by their fellow inmates was officially embraced.

Eastern Pennsylvania Prison was designed and built by the architect John Haviland, a relative newcomer from England. It cost three quarters of a million dollars to build, which was an incredible expenditure for the time. It was the largest building in America in the 1820s (Alosi, 2008; Orland, 1975). The prison itself was huge, with seven massive stone

**Pennsylvania prison system:**  
Prisons that emphasized silence and isolated inmates in their cells, restricting their contact with others. They reinforced the need for penitence.

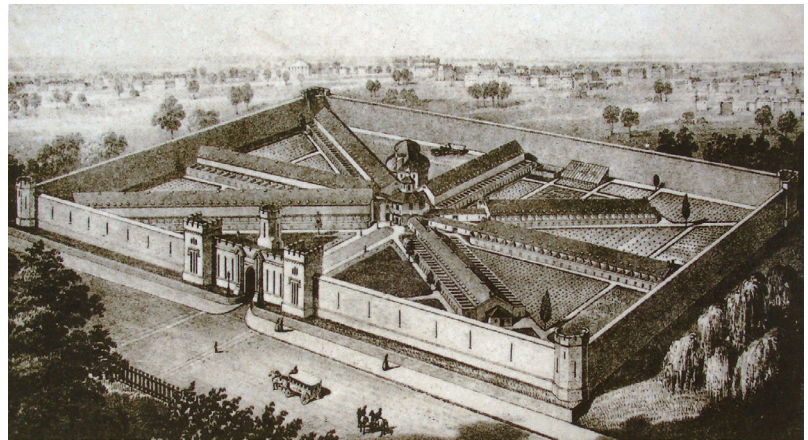
spokes of cells radiating off of a central rotunda, as on a wheel. A 30-foot wall was constructed around the outside perimeter of the prison, thus physically and symbolically reinforcing the separation of the prison and its inhabitants from their community (Nagel, 1973). The cells were built large (15 by 7.5 feet with 12-foot ceilings), and those on the lowest tier had their own small outside exercise yard attached, so that inmates could do virtually everything in their cells (Harris, 1973; Orland, 1975). The cells had both hot water and flushing toilets; the prison was reportedly the first public building in the country to have such amenities. There were 400 solitary cells in this prison (Orland, 1975). At first, inmates were not to work, but that dictate was later changed, and they were allowed to work in their cells (Harris, 1973).

The only contact inmates were to have with the outside was with the clergy and some vocational teachers: “The reading of the Scriptures would furnish the offender with the moral guidance necessary for reform” (Nagel, 1973, p. 7). They had no access to visitors or letters or newspapers. Even their exercise yards were surrounded by a high stone fence. When they were brought into the prison and were taken for showers or to see the doctor, they had to wear a mask or a draped hood so as to maintain their anonymity and to prevent them from figuring out a way to escape (Alosi, 2008). As to how else they could occupy their time, “they made shoes, wove and dyed cloth products, caned chairs, and rolled cigars. Those products were sold to defray prison costs” (Roberts, 1997, p. 33).

The stated purpose of the solitary confinement was to achieve reform or rehabilitation. Quakers believed that God resides in everyone, and for a person to reach God, they must reflect. Silence is required for self-reflection, the Quakers thought. The Quakers also believed that as God was in everyone, all were equal and were deserving of respect (Alosi, 2008).

Solitary confinement, as a practical matter, remained in existence at Eastern Pennsylvania Prison until after the Civil War but was not formally ended until 1913 (Alosi, 2008). When it was rigorously applied, there are indications that it drove inmates insane. In fact—and tellingly—most of the European countries that copied the Eastern Pennsylvania model and its architecture did not isolate the inmates for this reason. Moreover, at a minimum, solitary confinement debilitated people by making them incapable of dealing with other people. For instance, the wardens’ journals for Eastern in the early years indicate that it was not uncommon for an inmate to be released and then to ask to be reinstated at Eastern because they did not know how to live freely. Some inmates, once released, would actually sit on the curb outside the prison, as they said they no longer understood the outside world or how to function in it (Alosi, 2008).

Although the separation of inmates under the Pennsylvania system was to be complete, there are indications that it was not. In testimony before a special investigation by a joint committee of the houses of the Pennsylvania Legislature in 1834 (before the whole prison was even completed), it was noted that a number of male and female inmates (there were a small number of female inmates housed separately at Eastern) were used for maintenance, cleaning, and cooking at the facility and roamed freely around it, speaking and interacting with one another and with staff (Johnston, 2010). Moreover, there were indications from this testimony that inmates were tortured to maintain discipline: One had died of blood loss from the iron gag put in his mouth, and another went insane after buckets of cold water were poured on his head repeatedly. It was alleged that food and supplies meant for inmates



**Photo 2.7** Eastern Pennsylvania Prison was the largest building in America in the 1820s. (Lithograph, circa 1855.)



were given to guards or community members by the prison cook (who was a wife of one of the guards). There were also indications of the use and abuse of alcohol by staff and inmates and of sexual improprieties involving the warden and his clerk, some male inmates, and the female cook. Although ultimately charges against the warden and his clerk related to these improprieties were dropped, the cook was blamed, and the guards who testified about the scandal (the whistleblowers) were fired.

In addition to these problems of implementation at Eastern, a debate raged among prison experts regarding the value of separation. As a result of the experiment with Western Pennsylvania Prison and its early use at Eastern Pennsylvania Prison and Auburn Prison, the idea of *total separation* was under siege. As mentioned, it was observed that for those truly subjected to it, solitary confinement and separation caused serious psychological problems for some inmates. Despite these problems, about 300 prisons worldwide copied the Eastern Pennsylvania model, and tens of thousands of people did time there, including the 1920s gangster Al Capone. It was a famous prison worldwide because of its philosophy, its architecture, and its huge size. It even became a tourist attraction in the 19th century, to the extent that famous English author Charles Dickens noted it as one of the two sights he wanted to see when visiting the United States (the other was Niagara Falls) (Alosi, 2008). It turns out, after a visit of a few hours and talking to inmates, keepers, and the warden, Dickens was far from impressed with its operation.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a new pastor in the Eastern Pennsylvania Prison when Charles Dickens, the celebrated English author, visits the prison in 1842. Your position is tenuous at the prison, and you have been told that it is dependent on your meticulous adherence to the rule of silence for inmates. Although you are not a proponent of this kind of control of inmates, the warden has made it clear to you that your livelihood and that of your family (you have eight children) depends on your complete compliance. For some reason, Mr. Dickens chooses to visit inmate cells and observe them while they work making shoes or weaving. You have been instructed to report whether

inmates speak to or even look at Mr. Dickens (as they have been instructed not to under penalty of confinement in a segregation cell for months, with only food and water). In the course of your rounds, you note that Dickens routinely and secretly—presumably to protect inmates from punishment—attempts to engage inmates in conversation. In a few instances, you have overheard inmates whisper responses to his queries. You cannot be sure that a guard has not also observed this behavior and has seen you in the vicinity when it occurred. What would you do? Would you report the offense? Would you ask Dickens to stop speaking to inmates (or would you just ask for his autograph)?

## Auburn, Sing Sing, and the New York (Congregate) System

**New York prison system:**  
Prisons included congregate work and eating arrangements but silent and separate housing.

The **New York prison system** was preferred over the Pennsylvania system and was copied extensively by American prison builders, in part because it disavowed the solitary confinement that Dickens and others lamented in the Pennsylvania prisons. Beaumont and Tocqueville (1833/1964) commented that the use of solitary confinement as normal practice for all inmates was ended at Auburn because it drove inmates insane. But it is not that the builders and planners of the Auburn Prison in New York learned from the Pennsylvania system; rather, they learned from their own dalliance with solitary confinement. At first, the inmates of Auburn were housed in solitary confinement in their cells, a practice that was

abandoned by 1822 because it led to mental anguish and insanity for inmates, and it hampered the efficient production of goods that can only be done in the congregate. By 1822, a total of 5 prisoners had died, 1 had gone insane, and the remaining 26 were pardoned by the governor of New York, as their mental faculties had deteriorated to such a great extent (Harris, 1973, p. 73). The governor ordered that inmates be allowed to leave their cells and work during the day, and in 1824, a legislative committee recommended the repeal of the solitary confinement laws (Harris, 1973).

Beaumont and Tocqueville (1833/1964) supported the practice of maintaining the solitude of inmates at night and their silence during the day as they worked, as they believed, along with the Quakers of Pennsylvania, that solitude and silence led to reflection and reformation and also reduced cross-contamination of inmates. As to labor, they claimed, “It fatigues the body and relieves the soul” (p. 57), along with supplementing the income of the state to support the prison.

Auburn Prison’s cornerstone was laid in 1816, the institution received its first inmates in 1817, and it officially opened in 1818, but it was not finished until 1819 (Harris, 1973). *Elam Lynds* (1784–1855), a strict disciplinarian and former Army captain, was its first warden in 1821. Auburn has been in existence ever since (204 years at the time of this writing, in 2020), though its name was changed to Auburn Correctional Institution in 1970.

Auburn’s cells were built back to back, with corridors on each side. The prison has always had a Gothic appearance, and its elaborate front and massive walls have been maintained up until today, with towers and a fortress façade. Auburn Prison has a storied history that spans from the virtual beginning of prisons in the United States to the present day. As was already noted, Beaumont and Tocqueville visited it and recommended it over the Pennsylvania prisons. Auburn opened with a solitary confinement system, which was very quickly abandoned and replaced with the congregate but silent system, which formally lasted until the beginning of the 20th century. It was the progenitor of such widely adopted practices as the lockstep walk for inmates, the striped prison uniform and the classification system that went hand in hand with it, and the well-known ball and chain. Warden Lynds believed in strict obedience on the part of inmates and the use of the whip by staff to ensure it (Clear et al., 2011). Under his regime, inmates were forbidden to talk or even to glance at one another during work or meals. Solitary confinement and flogging were used for punishing and controlling inmates. As noted in the foregoing, except for a few years at the beginning of Auburn’s history, inmates were single-celled at night, and the cells were quite small, even coffin-like ( $7 \times 7 \times 3.5$  feet). During the day, the inmates worked together, though silently, in factories and shops (Roberts, 1997).

The small cells, like those at Auburn, were cheaper to build, and prisons could house more inmates in the same amount of space than prisons with larger cells. Also, congregate work allowed the more efficient production of more products, and thus, more profit could be made (Roberts, 1997). However, putting all of these inmates together in one place presented some difficulties in terms of control and management. This is why the control techniques represented by the use of the lash, solitary confinement, marching in lockstep, and the requirement of silence came into play. As Roberts (1997) noted, “Ironically, whereas the penitentiary concept was developed as a humane alternative to corporal punishment,



**Photo 2.8** Auburn Prison, officially opened in 1818, is still in operation today, though its name has changed to Auburn Correctional Institution.

© Philip Scalia/Alamy





Peter Greenberg

**Photo 2.9** Sing Sing Prison, modeled after Auburn Prison, was built by inmates from Auburn Prison in 1825.

corporal punishment returned as a device to manage inmates in penitentiaries based on the Auburn System” (p. 44).

Sing Sing Prison was modeled after Auburn architecturally in that the cells were small, and there were congregate areas for group work by inmates, but its cellblocks were tiered and very long. Inmate management and operations exactly mirrored the Auburn protocols. In fact, Sing Sing was built by Auburn inmates under the supervision of Auburn’s Warden Lynds.

The prison was built on the Hudson River, near the towns of Ossining and Mount Pleasant (and for many years, the prison was referred to as Mount Pleasant), from locally quarried stone. Products produced at the prison could be transported

to local towns via the river. Inmates sent there would refer to it as being sent “up the river,” as it is 30 miles north of New York City (Conover, 2001). Its name derives from the Native American phrase Sint Sinks, which came from the older term *ossine ossine* and, aptly, means “stone upon stone” (Lawes, 1932, p. 68).

Warden Lynds picked 100 men from Auburn Prison to build Sing Sing in 1825. The story of its construction, in silence, as relayed by Lewis Lawes (1932), a later warden of Sing Sing, goes like this:

Captain Lynds, then the foremost penologist of the day, was insistent, to the point of hysteria, on silence as the backbone of prison administration. “It is the duty of convicts to preserve an unbroken silence,” was the first rule he laid down. “They are not to exchange a word with each other under any pretense whatever; not to communicate any intelligence to each other in writing. They are not to exchange looks, wink, laugh, or motion to each other. They must not sing, whistle, dance, run, jump, or do anything which has a tendency in the least degree to disturb the harmony or contravene to disturb the rules and regulations of the prison.” . . . The sea gulls in the broad river, darting in large flocks here and there on the water, chirped raucously at these strange creatures sweating at their tasks in silence. Stone upon stone. (pp. 72–73)

Once the prison was constructed, it was noticed that with some effort, inmates could communicate between the closely aligned cells, but nothing was done to rebuild the cells. Moreover, as the inmates from New York City’s old Newgate Prison were moved to Sing Sing right away and so were additional inmates from Auburn, the prison was full at 800 inmates by 1830 (Lawes, 1932).

Prison labor in the early years of prisons (before the Civil War) was contract labor and subject to abuse. Contractors would pay a set amount for inmates’ labor and then would make sure they got the most work out of them, cutting costs where they could and bribing wardens and keepers when they needed to. Eventually, such contracts were ended, as the cheap labor made prison-produced goods too competitive with products made by free workers (Conover, 2001).

When one thinks about old prisons, those castle-like fortress prisons, the images of Auburn and Sing Sing inmates and prisons come to mind, even unknowingly. So many U.S. prisons copied the New York design and operation of these prisons that even if one is not thinking of Auburn or Sing Sing per se, one is likely imagining a copy of them. By the time Beaumont and Tocqueville (1833/1964) visited the United States in 1831, they reported that Auburn Prison had already been copied in prisons built in Massachusetts, Maryland, Tennessee, Kentucky, Maine, and Vermont.

It was not just the physical structure or the silent but congregate inmate management that was copied, however, from Auburn and Sing Sing, but the inmate discipline system as well. Orland (1975) summarized the Connecticut prison regulations of the 1830s, which were borrowed from the New York model:

Inmates were exhorted to be “industrious, submissive, and obedient;” to “labor diligently in silence”; they were forbidden to “write or receive a letter” or to communicate in any manner “with or to persons” without the warden’s permission; they were prohibited from engaging in conversation “with another prisoner” without permission or to “speak to, or look at, visitors.” (p. 26)



## In Focus 2.3

### LEWIS E. LAWES’S OBSERVATIONS ON SING SING’S HISTORY AND DISCIPLINE

In 1920, Lawes began his tenure as warden of Sing Sing, and he later commented on how the severity of prison discipline had waxed and waned at this prison over the years. At first, it was very severe, with the use of the cat-o-nine-tails whip: “It was made of long strips of leather, attached to a stout wooden handle, and was not infrequently wired at the tips. The ‘cat’ preferred its victim barebacked” (Lawes, 1932, pp. 74–75). Under a warden, in 1840, however, the cat was retired, and inmates could have a few visits and letters. A Sunday school and library were constructed, and the warden walked among the men. Within a few years, though, a new warden was appointed with a new political party in power, and all of the reforms were abandoned, and the cat was resurrected. A few years later, when a reportedly insane inmate was literally whipped to death, the public was outraged, and the use of the lash declined for men and was prohibited for women. The prison discipline was consequently softened, and this cycle continued for the rest of the 1800s, from severe to soft discipline. Lawes maintained, after reviewing all of the wardens’ reports since the opening of Sing Sing, that escapes were highest during times of severe punishment, despite the risks inmates took should they be caught.

He also observed that the prison had problems with management and control in other ways,

noting that by 1845, an outside accountant found that the prison held 20 fewer female and 33 fewer male inmates than it had officially on the books, that \$32,000 was missing, and that there was no explanation as to where these people were or where the money had gone (Lawes, 1932, p. 82). The warden’s and other official reports indicated that inmates were poorly fed and that diseases were rampant at Sing Sing. By 1859, some of Sing Sing’s small cells had become doubles to accommodate the overcrowding, and the punishments got worse. By 1904, the official report was that the prison was in a disgraceful condition. Lawes (1932) wrote, “Such was the Sing Sing of the Nineteenth Century. A hopeless, oppressive, barren spot. Escapes were frequent, attempts at escape almost daily occurrences. Suicides were common” (p. 88).

### Discussion Questions

1. Why is total control in prisons almost impossible to achieve?
2. What does it take to achieve close to total control?
3. Do you think prisons of today should be operated in the way that Sing Sing was in its early days? Why, or why not?

## Early Prisons and Jails Not Reformed

**LO 2.6** Summarize what the social critics (Beaumont, Tocqueville, and Dix) thought of early prisons and why.

Lest one be left with the impression that all prisons and jails in the early 1800s in America were reformed, we should emphasize that this was not the case. Beaumont and Tocqueville (1833/1964) commented, for instance, on the fact that New Jersey prisons, right across the river from the reformist New York system, were vice ridden and that Ohio prisons, though ruled by a humanitarian law, were “barbarous,” with half of the inmates in irons and “the rest plunged into an infected dungeon” (p. 49). But in New Orleans, they found the worst, with inmates incarcerated with hogs. “In locking up criminals, nobody thinks of rendering them better, but only of taming their malice; they are put in chains like ferocious beasts; and instead of being corrected, they are rendered brutal” (p. 49).

As to jails, Beaumont and Tocqueville (1833/1964) noted no reforms at all. Inmates who were presumed innocent or, if guilty, had generally committed much less serious offenses than those sent to prison were incarcerated in facilities far worse in construction and operation than prisons, even in states where prison reform had occurred. In colonial times, inmates in American jails were kept in house-like facilities and were allowed much more freedom, albeit with few amenities that they did not pay for themselves. Dix (1843/1967) described many jails, particularly those that did not separate inmates, as “free school[s] of vice.” However, as the institutionalization movement began for prisons, jails copied their large, locked-up, and controlled atmosphere, without any philosophy of reform to guide their construction or operation (Goldfarb, 1975). By midcentury, some jails had used the silent or separate systems popular in prisons, but most were merely congregate and poorly managed holding facilities (Dix, 1843/1967). Such facilities on the East Coast, by the latter quarter of the 1800s, were old, crowded, and full of the “corruptions” the new prisons were designed to prevent (Goldfarb, 1975). In the end, Beaumont and Tocqueville (1833/1964) blamed the lack of reform of prisons in some states and the failure to reform jails hardly at all on the fact that there were independent state and local governments who handled crime and criminals differently: “These shocking contradictions proceed chiefly from the want of unison in the various parts of government in the United States” (p. 49).

### Prisons: “The Shame of Another Generation”

The creation of prisons was a grand reform, promoted by principled people who were appalled at the brutality of discipline wielded against those in their communities. Prisons were an exciting development supported by Enlightenment ideals of humanity and the promise of reformation. They were developed over centuries, in fits and starts, and had their genesis in other modes of depriving people of liberty (e.g., galley slavery, transportation, jails, bridewells, houses of corrections, and early versions of prisons), but they were meant to be much better—so much better—than these.

It is not clear whether the problems arose for prisons in their implementation or in their basic conceptualization. In societies in which people who are poor and dispossessed exist among institutions in which law and practice serve to maintain their status, is it any wonder that prisons, as a social institution that reflects the values and beliefs of that society, would serve to reinforce this status? All indications are that most prisons, even those that were lauded as the most progressive in an earlier age of reform, were, by the mid-19th century, regarded as violent and degrading places for their inmates and staff.

## Dorothea Dix's Evaluation of Prisons and Jails

Dorothea Dix was a humanitarian, a teacher, and a penal and insane asylum reformer who, after 4 years of studying prisons, jails, and almshouses in northeastern and midwestern states, wrote the book *Remarks on Prisons and Prison Discipline in the United States*, in 1843 (reprinted in 1845 and 1967). The data for her book were assembled from multiple observations at prisons; conversations and correspondence with staff, wardens, and inmates in prisons; and a review of prisons' annual reports.

Dix tended to prefer the Pennsylvania model over the New York model because she thought that inmates benefited from separation from others. However, she forcefully argued that both prison models that had promised so much in terms of reform for inmates were, in fact, abject failures in that regard. She found these and most prisons to be understaffed, overcrowded, and run by inept leaders who changed much too often. She noted that at Sing Sing, about 1,200 lashes, using the cat-o'-nine-tails, were administered every month to about 200 men, an amount she thought too severe, though she believed that the use of the lash, especially in understaffed and overcrowded prisons like Sing Sing and Auburn, was necessary to maintain order (Dix, 1843/1967). In contrast, at Eastern Pennsylvania Prison, she commented that punishments included mostly solitary confinement in darkened cells, which, to her, appeared to lead to changes in the behavior of recalcitrant inmates. Dix argued, as far as inmate discipline goes, "Man is not made better by being degraded; he is seldom restrained from crime by harsh measures" (p. 4).

Thus, Dix argued against the long sentences for minor offenses that she found in prisons of the day (e.g., Richmond, Virginia; Columbus, Ohio; Concord, Massachusetts; Providence, Rhode Island) and the disparity in sentencing from place to place. She thought not only that such sentences were unjust but that they led to insubordination by inmates and staff who recognized the arbitrary nature of the justice system. On the other hand, in her study of prisons, she found that the pardoning power was used too often, and this again led, she thought, to less trust in the just and fair nature of the system and to insubordination among its inmates.

Dix also remarked on the quality and availability of food and water for inmates in early correctional facilities. She found the food to be adequate in most places, except Sing Sing, where there was no place to dine at the time of the second edition of her book (1845), and the water inadequate in most places, except the Pennsylvania prisons, where it was piped into all of the cells. Her comments on the health, heating, clothing, cleanliness, and sanity of inmates also were detailed, by institution, and indicated that though there were recurrent problems with these issues in prisons of the time, some prisons (e.g., Eastern Pennsylvania Prison) did more than others to alleviate miseries by changing the diet, providing adequate clothing, and making warm water for washing available to inmates.

Dix did not find that more inmates were deemed "insane" in Pennsylvania-modeled prisons on the basis of her data—or at least not more than one might expect, even in the Pennsylvania prisons. Given the history of the separate system's being linked to insanity, she was sensitive to this topic. However, by 1845, when she published the second edition of her book, inmates at Eastern were not as "separate" from others as they had been, both formally and informally, and this might explain the relative paucity of insanity cases in her data. By this time, inmates were allowed to speak to their keepers (guards) and attend church and school.

Dix also explored the moral and religious instruction provided at the several state prisons and county prisons (jails) that she visited. Except for Eastern Pennsylvania Prison, she found them all deficient in this respect and that the provisions of such services were severely lacking in the jails.

Dix studied a peculiar practice of the early prisons: allowing visitors to pay to be spectators at the prisons. Adults were generally charged 25 cents, and children were half price at some facilities. In Auburn, in 1842, the prison made \$1,692.75 from visitors; in Columbus, Ohio, in 1844, the prison made \$1,038.78; and Dix documented five other prisons that allowed the same practice, a practice she thought should be “dispensed with” as it “would not aid the moral and reforming influences of the prisons” (p. 43). Of course, this fascination with watching inmates continues today, with reality-based television shows filmed in prisons and jails.

Finally, Dix tried to explore the idea of recidivism or, as she termed it, reform. Prisons did not keep records. In most respects and in all of these areas, she concluded from her study of several prisons that Eastern Pennsylvania Prison was far superior to most prisons and that Sing Sing Prison was far inferior, but she thought even Eastern Pennsylvania Prison was far from perfect. Rather, she called for more focus on the morals and education of young people and on preventing crime as a means of improving prisons and reducing their use—a call that sounds very familiar today.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are Dorothea Dix, the American humanitarian and penal and insane asylum reformer, and you are visiting prisons and jails in the United States in the 1840s. The task you have set for yourself is to document what appears to be working and what does not in the facilities you visit. You pride yourself on maintaining high moral standards. You are not opposed to the use of the lash in some circumstances, but its overuse, you think, is counterproductive in that it turns men into “brutes”

rather than reforming them. In the course of your visit to Sing Sing, where the lash is used for the smallest offense, you notice that an emaciated inmate steals a piece of bread off a tray. The warden, though known for his harsh treatment of inmates, has treated you with every courtesy, and you know that he would expect you to report this offense. What would you do, and why? Do you think that your decision is colored by the time period you live in? Why, or why not?

## The Failure of Reform Is Noted

Dix’s writings foretold the difficulties of implementing real change, even if the proposal is well intentioned. Simply put, prisons in the latter half of the 19th century were no longer regarded as places of reform. As Rothman (1980) stated,

Every observer of American prisons and asylums in the closing decades of the nineteenth century recognized that the pride of one generation had become the shame of another. The institutions that had been intended to exemplify the humanitarian advances of republican government were not merely inadequate to the ideal, but were actually an embarrassment and a rebuke. Failure to do good was one thing; a proclivity to do harm quite another—and yet the evidence was incontrovertible that brutality and corruption were endemic to the institutions. (p. 17)

Newspapers and state investigatory commissions, by the mid-19th century, were documenting the deficiencies of state prisons. Instead of the relatively controlled atmosphere of the Pennsylvania or Auburn prisons of the 1830s, there was a great deal of laxity and



brutality (Rothman, 1980). Prisons were overcrowded and understaffed, torture was used to gain compliance, and the presence of prison contractors led to corruption, such as paying off wardens to look the other way as inmate labor was exploited or, alternatively, the wardens and staff using inmates and their labor for their own illegal ends.

## The Renewed Promise of Reform

**LO 2.7** Explain why reform of prisons and jails was needed and how those reform efforts worked out.

### The 1870 American Prison Congress

The first major prison reform came approximately 50 years after the first New York and Pennsylvania prisons were built, doubtless as a result of all of those calls for change. The 1870 American Prison Congress was held in Cincinnati, Ohio, with the express purpose of trying to recapture some of the idealism promised with the creation of prisons (Rothman, 1980). Despite their promises of reform and attempts at preventing “contamination,” the early prisons had become, by the 1860s, warehouses without hope or resources. All of the themes mentioned at the beginning of this chapter—save the desire for reform, and that was remedied with the next round of reforms to follow the congress—applied to the operation of the 19th-century prisons: They were overcrowded, underfunded, brutal facilities where too many inmates would spend time doing little that was productive or likely to prepare them to reintegrate into the larger community.

Appropriately enough, then, the Declaration of Principles that emerged from the American Prison Congress of 1870 was nothing short of revolutionary at the time and provided a blueprint for prisons we see today (Rothman, 1980). Some of those principles were concerned with the grand purpose of prisons—to achieve reform—while others were related to their day-to-day operation (e.g., training of staff, eliminating contract labor, treatment of the insane) (American Correctional Association, 1983).

### Elmira

As a result of these principles, a spirit of reform in corrections again spurred action, and the **Elmira Reformatory** was founded in 1876 in New York (Rothman, 1980). The reformatory would encompass all of the rehabilitation focus and graduated reward system (termed the **marks system** because if one behaves, it is possible to earn marks that, in turn, entitle one to privileges). The marks system, as mentioned previously, was practiced by Maconochie and later by Crofton in Irish prisons and was promoted by reformers. Elmira was supposed to hire an educated and trained staff and to maintain uncrowded facilities (Orland, 1975).

Zebulon Brockway was appointed to head the reformatory, and he was intent on using the ideas of Maconochie and Crofton to create a “model” prison (Harris, 1973, p. 85). He persuaded the New York legislature to pass a bill creating the indeterminate sentence, which would be administered by a board rather than the courts. He planned for the reformatory to handle only younger men (ages 16 to 30), as he expected that they might be more amenable to change. He planned to create a college at Elmira that would educate inmates from elementary school through college. He also sought to create an industrial training school that would equip inmates with technical abilities. In addition, he focused on the physical training of inmates, including much marching but also the use of massages and steam baths (Harris, 1973). The marks system had a three-pronged purpose: to discipline, to encourage reform, and to justify good time, in order to reduce the sentence of the offender. Brockway did not want to resort to the use of the lash.

**Elmira Reformatory:** Founded in 1876 in New York as a model prison in response to calls for the reform of prisons from an earlier era, it aimed to encompass all of the rehabilitation focus and graduated reward system that reformers were agitating for.

**Marks system:** A graduated reward system for prisons in which, if one behaves, it is possible to earn “marks” that, in turn, entitle one to privileges.

Much lauded around the world and visited by dignitaries, the Elmira Reformatory and Brockway's management of it led to the creation of good time, the indeterminate sentence (defined in Chapter 4), a focus on programming to address inmate deficiencies, and the promotion of probation and parole. "After Brockway, specialized treatment, classification of prisoners, social rehabilitation and self-government of one sort or another were introduced into every level of the corrections system" (Harris, 1973, pp. 86–87).

Unfortunately and as before, this attempt at reform was thwarted when the funding was not always forthcoming, and the inmates did not conform as they were expected to. The staff, who were not the educated and trained professionals Brockway had envisioned, soon resorted to violence to keep control. In fact, Brockway administered the lash himself on many occasions (Rothman, 1980). It should not be forgotten, however, that even on its worst day, the Elmira prison was likely no worse—and probably much more humane—than were the old Auburn or Sing Sing prisons.

### The Creation of Probation and Parole

Probation and parole, which we will cover in Chapters 6 and 9, were developed in the first half of the 19th century, and their use spread widely across the United States in the early 20th century. The idea behind both was that programming and assistance in the community while supervising offenders could reduce the use of incarceration and help offenders transition more smoothly back into the community. Doubtless, the intent was good, but the execution of this reform was less than satisfactory; however, it did represent an improvement over the correctional practices that preceded it (Rothman, 1980).

## American Corrections in the 20th and 21st Centuries

**LO 2.8** Assess where we are today in America in terms of prison types and how we got there.

### Southern and Northern Prisons and the Contract and Lease Systems

Southern prisons, because of the institution of slavery, developed on a different trajectory from that of other prisons. As indicated by Young's (2001) research, prisons in the South were little used before the Civil War. In agriculturally based societies, labor is prized and needed in the fields, and slave labor had served as a basis for the southern economy. Once slavery was abolished with the Thirteenth Amendment to the Constitution, southern states, in the Reconstruction period following the Civil War, began incarcerating more people, particularly formerly enslaved people, and re-creating a slave society in the corrections system. As Oshinsky (1996) documents, for Mississippi prisons, Black people were picked up and imprisoned for relatively minor offenses and forced to work like enslaved people on prison plantations or on plantations of southern farmers.

In the North, Midwest, and, later, the West, prisons were built somewhat on the Auburn model, but for the most part, corrections officials abandoned the attempt to completely silence inmates. It was no longer emphasized, as maintaining such silence required a large staff and constant vigilance, and these were usually not available in the understaffed and overcrowded facilities (Jacobs, 1977). Inmates in such prisons worked in larger groups under private or public employers, and order was maintained with the lash or other innovations in discipline (see also Lawes, 1932, regarding the management of Sing Sing). Although there was no pretense of high-minded reform going on in these prisons, their conditions

and the accommodations of inmates were thought to be far superior to those provided in southern prisons of the time. Conditions under both the **contract and lease systems** could be horrible but were likely worse under the southern lease system, where contractors were often responsible for both housing and feeding inmates. Such contractors had little incentive for feeding or taking care of inmates, as the supply of labor from the prison was almost inexhaustible.

**Contract and lease systems:**

Systems devised by prisons to hire out inmates' labor to farmers or other contractors.

## Industrial Prisons

The contract system morphed into industrial prisons in the latter part of the 19th century and first few decades of the 20th century in several states. Inmates were employed either by outside contractors or by the state to engage in the large-scale production of goods for sale on the open market or to produce goods for the state itself. Eventually, as the strength of unions increased and particularly as the Depression struck in 1930, the sale of cheap, prison-made goods was restricted by several state and federal laws, limiting the production of goods in prisons to just products the state or nonprofits might be able to use.

## Correctional Institutions or Warehouse Prisons?

In his classic book, *Stateville: The Penitentiary in Mass Society*, James Jacobs (1977) described the operation of and environmental influences on **Stateville Prison** in Illinois. It was built as a panopticon in 1925 in reaction to the deplorable conditions of the old Joliet, Illinois, prison, built in 1860. Joliet was overcrowded, and Stateville Prison was built to relieve that overcrowding, but by 1935, Stateville itself was full, at 4,000 inmates, and the population at Joliet had not been reduced at all.

**Stateville Prison:** Built in Illinois as a panopticon in 1925 in reaction to the deplorable conditions of the old Joliet, Illinois, prison, built in 1860.

In a reformist state such as Illinois at the time (juvenile court reform began there, and it was one of the first states to initiate civil service reforms), Stateville was conceived as a place where inmates would be carefully classified into treatment programs that would address their needs and perceived deficiencies and where they could earn good time and eventual parole. Inmates were believed to be “sick,” and a treatment regimen provided by the prison would address that sickness and hopefully “cure” them so that they might become productive members of society. Thus, correctional institutions would use the **medical model** to treat inmates. Even though it was built as a maximum-security prison, Stateville’s conception fit the definition of a correctional institution, where inmates were not to be merely warehoused but corrected and treated. However, though inmates in the Illinois system were classified, and good time was available for those who adhered to the rules, there was little programming available, the prison was crowded, it was understaffed, and the staff who were employed were ill trained (Jacobs, 1977). Moreover, the first 10 years of operation were filled with disorganized management and violent attacks on staff and inmates in a prison controlled by Irish and Italian gangs.

**Medical model:** Rehabilitation model that assumes criminals are sick and need treatment.

In essence and despite the intent to create a correctional institution, Stateville became what is termed a **Big House prison**. These, according to Irwin (2005), are fortress stone or concrete prisons, usually maximum security, whose attributes include “isolation, routine, and monotony” (p. 32). Strict security and rule enforcement, at least formally, and a regimentation in schedule are other hallmarks of such facilities. The **convict code**, or the rules inmates live by vis-à-vis the institution and staff, is clear-cut: “1. Do not inform; 2. Do not openly interact or cooperate with the guards or the administration; 3. Do your own time” (p. 33).

**Big House prisons:** Fortress stone or concrete prisons, usually maximum security, whose attributes include isolation, routine, and monotony. Strict security and rule enforcement, at least formally, and a regimented schedule are other hallmarks of such facilities.

The next 25 years of Stateville Prison (1936–1961) were marked by the authoritarian control of one warden (Ragen), the isolation of staff and inmates from the larger world, strict formal rule enforcement, and informal corruption of those rules. Some of the trappings of a correctional institution were present (i.e., good time for good behavior and parole), but inmates, for the most part, were merely warehoused, double- and triple-celled. Those

**Convict code:** Informal rules inmates live by vis-à-vis the institution and staff.



**Photo 2.10** The prison yard of Texas State Penitentiary at Huntsville in the 1870s. Huntsville is an example of a Big House prison.

inmates who were favored by staff and the warden were given better housing and a whole array of privileges. Corruption seethed under the surface, with the relaxation of rules for tougher inmates, black-market trade by both staff and inmates, and the warden turning his head when beatings of inmates by staff occurred. By the mid-1950s, Ragen, who had been appointed director of corrections for the state in 1941, was redefining its purpose as one of rehabilitation (Jacobs, 1977). So that his prisons would appear to be at the forefront of the move to a rehabilitative focus, the numbers of inmates in school and in vocational programming did increase, though staff, under the guise of providing vocational training, were able to use the inmate labor to repair their appliances and cars free of charge.

By the 1960s, Stateville and other Illinois prisons, much like the rest of the

country, were under pressure internally by more career-oriented professionals interested in management of prisons and externally by greater racial consciousness and an emerging inmates' rights movement. Eventually, such prisons had to open their doors to other ideas and perspectives and sometimes the press, as well as court-mandated legal review of their practices (Jacobs, 1977).

The 1960s through the 1990s saw a boom in prison building across the country, most of the medium- and minimum-security variety, which were more likely to classify inmates according to both security and treatment needs, institute rehabilitative programming (although the amount and value of this have varied from state to state and by time period), and use good time and parole (except in those states that abolished it as part of a determinate-sentencing schema; see Chapter 4). Thus, by the 1960s and 1970s, the ideal of a correctional institution had been more fully realized in many parts of the country and in some prisons. However, the extent to which it truly was realized is in doubt. Staff hired to work in these prisons, other than the few treatment staff, tended to have only a GED or high school diploma and were not paid a professional wage. The prisons were understaffed. Also, they often were crowded, and educational and other treatment programs, even work programs, were limited. Good time was usually given, though inmates could lose it. They did not, in fact, earn it; rather, they did time and got it. Parole was typically poorly supervised, and by the 1970s and through the 1980s and early 1990s, several states and the federal government had eliminated it as they moved to determinate sentencing (see Chapter 4).

By the mid-1970s, a conservative mood regarding crime had gripped the country, and skepticism had developed about the value of rehabilitative programming. The media and politicians played on the fear of crime, and although overall street crime has been decreasing since the early 1980s in the United States, and violent crime has been decreasing since the mid-1990s, a prison-building boom ensued (Irwin, 2005). Prisons of the 1980s, 1990s, and into the 2000s reflect all of these earlier trends and influences. The maximum- and super-maximum-security prisons of today (and possibly some medium- and minimum-security prisons) are merely **warehouse prisons**, where inmates' lives and movement are severely restricted and rule bound. There is no pretense of rehabilitation in warehouse prisons;

**Warehouse prisons:** Large prisons, of any security level, where inmates' lives and movement are severely restricted and rule bound. There is no pretense of rehabilitation; punishment, incapacitation, and deterrence are the only justifications.



punishment and incapacitation are the only justifications for such places. The more hardened and dangerous prisoners are supposed to be sent there, and their severe punishment is to serve as a deterrent to others in lesser security prisons.

These lesser security prisons, the medium- and minimum-security prisons, which compose roughly two thirds of all prisons, do still have the trappings of rehabilitation programming, though it is limited in scope and funding, and they usually afford good time and even parole. (Most states still have a version of these.) They, too, are often crowded and understaffed, and their staff are not as educated or well paid as one might wish. However, such prisons do approximate the original ideal of a correctional institution.

The rest of this book will be focused primarily on the correctional institution model as it is often imperfectly implemented in the United States. There are some who argue (e.g., Irwin, 2005) that the rehabilitative ideal is not realized in prisons and, instead, that programming is too often used to control inmates rather than to help locate another life path that does not involve crime. Correctional institutions intended to rehabilitate instead end up warehousing the “dangerous classes” (Irwin, 2005) or people living in poverty and people of color. Of course, our history of corrections would lead us to be skeptical of any easy claims to rehabilitative change. (For a fuller discussion of rehabilitative programming, see Chapter 14.) As will be explored in this book, too often a plan, though well intentioned, is inadequately conceived and executed, and as a result, nothing changes, or worse, we achieve precisely the opposite results.

## Themes That Prevail in Correctional History

### LO 2.9 Describe the prevailing themes in correctional history.

There are several themes that are interwoven throughout the history and current operation of corrections in the United States. The overriding one, of course, has been money. Operating a correctional institution or a program is a costly undertaking, and from the first, those engaged in this business have had to concern themselves with how to fund it. Of course, the availability of funding for correctional initiatives is shaped by the political sentiments of the time. Not surprisingly, schemes to fund correctional operations often have included ways to use inmate labor. Complementary themes that have shaped how money might be made and spent and how inmates or clients might be treated have included a move to greater compassion and humanity in correctional operations; the influence that the demographics of inmates themselves have played (e.g., race, class, gender); religious sentiments about punishment and justice; architecture, as it aligns with supervision; the pressure that crowding places on correctional programs and institutions; and the fact that though reforms might be well intentioned, they do not always lead to effective or just practice. Again, this list of themes is not exhaustive, but it does include some of the prevailing influences that span correctional history in the United States and that require the attention of each successive generation.

In the following chapters, we will see such themes and the history of corrections, as detailed here, dealt with again and again. However, although we continue to repeat both the mistakes and successes of the past, that does not mean we cannot make and have not made any progress in corrections. There is no question that, on the whole, the vast majority of jails and prisons in this country are much better than were those for much of the past 200 years, though the unprecedented use of correctional sanctions in the United States would be regarded by some as overly harsh and thus a regressive trend. The themes presented here represent ongoing questions (e.g., how much money or compassion or religious influence is the “right” amount), and as such, we are constantly called upon to address them.





## Perspective From a Practitioner

**PAT MAHONEY, ALCATRAZ CORRECTIONS OFFICER**

**Position:** Corrections officer and boat captain

**Location:** Alcatraz Federal Penitentiary

### How long were you a corrections officer on Alcatraz?

From 1956 to 1963, so seven years—the best seven years of my career. Alcatraz was a special place, from the guards to the convicts.

### What were the primary duties and responsibilities of a corrections officer on Alcatraz?

There were about 15 positions, from tower, to kitchen, to garbage truck, to prison industries, supporting food and water deliveries, and supervising convict efforts for clean up and all the other daily requirements. It was surprisingly busy. Corrections officers also manned the gun gallery in the cell house. Roles were changed about every three months. I was originally a corrections officer; then, I was promoted to boat captain. I was also always on call if any work had to be done. I also supervised a crew that did maintenance for the actual prison.

### In general, what did a typical day for a corrections officer on Alcatraz include?

In the cell house, there were several in charge of convict teams that cleaned the cell house continuously. They supervised or conducted inmate counts. They also had to get convicts from their

cells to visiting attorneys, the barbershop, showers, meals, and work locations. The hours were always busy. Boredom was not ever a factor. Everyone had things to do at all times. The tower guards were the least active but had regular duties and communication with others. Tower guards also watched the bay and occasionally saw a boat in distress, so they became a primary communicator to the Coast Guard for boats around Alcatraz.

Life on the Rock was fun when not on duty. We had a social hall, two bowling lanes, commissary for food, a playground for the kids, a handball court, and regular family dinners. About every three weeks, we had an island-wide dinner for all guards and families at the social hall. The view from the island was always tremendous. We looked right on downtown San Francisco.

### What would your advice to someone either wishing to study or now studying criminal justice to become a corrections officer be?

The key is to be honest. If convicts think for a second that you are not honest, they will try to work you until you get fired or hurt. They can sense if someone is not honest. It was an exciting role, meeting some of the best and worst of society at Alcatraz. In prison, there are no weapons for the guards on the floor. All know this, so there is a common respect. You need good people skills to work with some who may have issues.

*Note: Written by Steve Mahoney (born on Alcatraz), as told by Pat Mahoney.*

## SUMMARY

**LO2.1** Explain the evolution of corrections and correctional institutions.

- Correctional institutions, as a type of prison, do exist in a less than perfect form in the United States.
- What is clear from the Western history of corrections is that what was intended when prisons, jails, and reformatories were conceived and how they actually operated, then and now, were and are often two very different things
- One overriding theme is the continued need for reform.

**LO2.2** Compare the different types of corrections used historically.

- Human beings have been inventive in their development of punishments and ways to hold and keep people.
- Jails were the first type of correctional facility to develop. They were often found in English castle keeps and dungeons and Catholic monasteries.

- Those accused or convicted of crimes who had more means were less likely to be treated harshly or punished severely.
- Galley slavery was a form of corrections in which convicts were sentenced to work as rowers on ships. Bridewells were places to hold and punish. Debtors' prisons were detention facilities for those who owed money. Transportation was a form of corrections in which offenders were transported to penal colonies.

**LO 2.3** Identify some of the key Enlightenment thinkers, their ideas, and how they changed corrections.

- Sometimes, old worldviews (paradigms) are challenged by new evidence and ideas, and they are then discarded for new paradigms. The Enlightenment period in Europe was a time for rethinking old ideas and beliefs.
- Bentham, Beccaria, Howard, and Penn were all especially influential in changing our ideas about crime, punishment, and corrections.
- Correctional reforms, whether meant to increase the use of humane treatment of inmates or to increase their secure control, often led to unintended consequences.
- Howard, Beaumont and Tocqueville, and Dix all conducted studies of corrections in their day and judged the relative benefits of some practices and institutions over others.

**LO 2.4** Identify the housing and punishments used in prisons and jails in colonial times.

- The first jail in America was built in Jamestown, Virginia. However, often people were held in homes or inns. Inmates were required to pay a fee for their upkeep. As expansion occurred, structures began to be erected specifically to house convicts.

**LO 2.5** Evaluate the two predominant prison systems of the early 1800s and their strengths and weaknesses.

- The Pennsylvania and the New York early prisons were the models for most American prisons of the 19th century.
- The Western Pennsylvania Prison was operated as solitary and separate confinement with no labor. The Eastern Pennsylvania Prison was operated as solitary confinement, and prisoners were to have no contact with any outsiders or one another, but they could produce goods.

- The New York prison system did not use solitary confinement.

**LO 2.6** Summarize what the social critics (Beaumont, Tocqueville, and Dix) thought of early prisons and why.

- They were opposed to solitary confinement and unsanitary living conditions.
- They were opposed to brutality and humiliation and inequality in treatment of people living in poverty versus those with means.
- They felt that prisoners could be reformed and educated.

**LO 2.7** Explain why reform of prisons and jails was needed and how those reform efforts worked out.

- The Elmira Reformatory arose out of a prison reform movement that occurred roughly 50 years after Auburn Prison was built.
- Probation and parole came into being in the early half of the 19th century.

**LO 2.8** Assess where we are today in America in terms of prison types and how we got there.

- The southern and northern versions of prisons that followed the Civil War were not like Elmira and instead were focused on using inmate labor for the production of goods for private contractors. This was a contract and lease system.
- Industrial prisons housed prisoners who were employed to produce on a large scale goods for sale on open markets.
- Stateville Prison, though conceived as a correctional institution with all that the term implies, for the most part became a Big House prison.
- Warehouse prisons severely restricted movements of prisoners and adhered to strict codes and rules.

**LO 2.9** Describe the prevailing themes in correctional history.

- These themes include money; greater compassion and humanity in corrections; the influence of inmate demographics; religious sentiments about punishment and justice; architecture, as it aligns with supervision; the pressure of overcrowding; and the fact that reforms do not always lead to effective or just practice.

## KEY TERMS

|                            |    |                        |    |                            |    |
|----------------------------|----|------------------------|----|----------------------------|----|
| Big House prisons          | 53 | Great Law              | 39 | Pennsylvania prison system | 42 |
| Bridewells                 | 34 | Marks system           | 51 | Stateville Prison          | 53 |
| Contract and lease systems | 53 | Medical model          | 53 | Transportation             | 34 |
| Convict code               | 53 | Newgate Prison         | 40 | Walnut Street Jail         | 41 |
| Correctional institutions  | 26 | New York prison system | 44 | Warehouse prisons          | 54 |
| Elmira Reformatory         | 51 | Norfolk Island         | 35 |                            |    |
| Galley slavery             | 33 | Panopticon             | 38 |                            |    |

## DISCUSSION QUESTIONS

1. Identify examples of some themes that run throughout the history of corrections. What types of punishments tend to be used and for what types of crimes? What sorts of issues influence the choice of actions taken against offenders?
2. How were people of different social classes treated in early jails and bridewells?
3. We know that transportation ended because of the development of sails, which was an improvement in technology. Can you think of other types of correctional practices that have been developed, improved upon, or stopped because of advances in technology?
4. Several historical figures mentioned in this chapter advanced ideas that were viewed as radical for their day. Why do you think such ideas were eventually adopted? Can you think of similar sorts of seemingly “radical” ideas for reforming corrections that might be adopted in the future?
5. Discuss the relative benefits and drawbacks of the Pennsylvania versus the New York model of early prisons. What did Beaumont and Tocqueville and Dix think of them, and why? Which type of prison would you rather work in or be incarcerated in, and why?
6. What roles did Penn, Bentham, Beccaria, and Howard play in reforming the prisons and jails of their time? Are the concerns they raised still valid today?
7. Note why there is often a disconnect between the intentions of reformers and the ultimate operation of their reforms. Why is it difficult for theory to be put into practice? How might we ensure that there is a truer implementation of reforms?
8. How are the themes that run through the history of corrections represented in current practices? Why do these themes continue to have relevance for correctional operations over the centuries?







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# 3

## Ethics and Corrections

### TEST YOUR KNOWLEDGE

Test your knowledge about ethics in corrections by answering the following questions. Check your answers on pages 385–386 after reading the chapter.

1. Ethics and morality are the same thing. (True or false?)
2. What is the difference between deontological and teleological approaches to ethics?
3. The ethical formalism framework includes the belief that there is a universal law that includes clear rights and wrongs. (True or false?)
4. Utilitarianism follows the principle that what is good is that which results in the greatest utility for the greatest number. (True or false?)
5. Most religions include a universal set of rights and wrongs. (True or false?)
6. Noble cause corruption is the idea that it is okay to do the wrong thing if it is for the right reasons. (True or false?)
7. A correctional officer who engages in unethical behavior for personal gain is practicing official deviance. (True or false?)
8. There are characteristics of correctional work that make it more susceptible to ethical violations. (True or false?)

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 3.1 Explain the differences between ethics and morality.
- 3.2 Describe the different ethical frameworks.
- 3.3 Analyze why people are motivated to commit ethical violations.
- 3.4 Identify why corrections workers might be prone to ethics violations and how they might be prevented.
- 3.5 Discuss the impact the war on drugs has in creating ethical challenges in the field of corrections.

### A NOVICE BOWS TO SUBCULTURAL PRESSURE

#### Mary K. Stohr

When I first started as a correctional officer at an adult male prison in Washington State, I was the second woman hired (and the first was hired a month before me). I was relatively well educated (two bachelor's degrees) and had worked at all kinds of jobs since age 10, but never in corrections. I was young (25), scared, and naive. My first reports were rejected by my sergeant as too wordy, and I was thought to be too soft on the inmates (I called the inmates Mr. this and Mr. that and treated them with courtesy). After about 4 weeks on the job and in an effort to help me, a well-meaning sergeant took me aside and said, "Stohr, I'm worried about you. I'm not sure you can do this job. You've got to learn to write better [meaning less and in a more spare fashion—he might as well have said, 'Just the facts, ma'am'], and you've got to treat the inmates with less respect, or you aren't going to make it on this job."

We were in a back area of the control room, and he pointed to an inmate at the control room window—we'll call him Mr. Smith. He said, "That man Smith, he's a dirty baby raper [which I took to mean that Smith was a child molester]. He's been hanging around the window when you're here because you are too nice to him. You've got to treat him differently, or he'll take advantage of you." Essentially, he said that I didn't have to be mean (he wasn't that kind of man), but I shouldn't be friendly either.

(Continued)

(Continued)

Well, I took this sergeant's advice to heart, as I knew he was trying to help me, and there were a few of the staff at the prison who wanted to see me and the other woman fail. I also paid attention to his advice, as he was well respected and had welcomed me to the job. (He was an uncle to the first woman hired.) I diligently studied the reports of other officers and tried to imitate them. As a result, my reports were suddenly accepted. But the thing I did that was small and that I regret was that I treated Mr. Smith with less respect than he probably deserved; not that he wasn't a child molester (I read his file when I became a counselor and had access to it), but he was still a human being, he was in my care, and how I acted was not professional. The next time Mr. Smith came to the window for his meds, I did not meet his eyes; he became Smith without the Mr., and I was quite abrupt with him. This kind of behavior characterized most of our interactions from then on. The sympathetic sergeant witnessed this and literally patted my back and said, "Stohr, you'll be alright," and that was it; I was accepted into the subculture, at least by him, but I wasn't entirely happy about it or proud of myself.

## Introduction: To Do the Right Thing!

### LO 3.1 Explain the differences between ethics and morality.

As you likely gathered from Chapter 2 on the history of corrections, ethical abuses have always been a problem for corrections workers. Their jobs are largely hidden from public view, somewhat cloaked in secrecy, with enormous amounts of discretion, and they deal with people in their care who have few rights and protections. Moreover, as we will discuss throughout this book, these are jobs (e.g., correctional officers, sergeants, lieutenants, and captains; probation and parole officers; correctional counselors; and numerous other positions) that do not always have professional status in terms of pay, training, experience, or educational requirements (these problems are all particularly true for correctional officers, less so for the other positions listed here) that would ensure that the best people are always hired and that they use their discretion wisely. Therefore, unqualified people are sometimes in these demanding correctional jobs, and because of this, they are more likely to make bad and sometimes unethical choices.

It cannot be overemphasized, however, that the vast majority of correctional staff, whether a correctional officer working in an adult facility or a probation officer working with youth in the community, are ethical in their work practices—meaning that they do the right thing. It is those few bad apples who leave a negative impression of corrections work and workers. Luckily, there are things an organization and its managers and workers can do to minimize abuse of power and resources by staff and to correct the misbehavior of some staff. The development of codes of ethics, the professionalization of staff, and the routinization of policies and procedures are all key to preventing ethical abuses. In this chapter, we will review those efforts to reduce corruption and abuses in corrections, which might be both unethical and illegal (see In Focus 3.1), but first, we will discuss what ethics are and are not and the source of ethical and unethical behavior.

## Defining Ethics: What Is Right (and Wrong)?

As mentioned in the foregoing, **ethics** are concepts and beliefs about, and the study of, what is right and wrong, and to be ethical is to practice in your work what is “right” behavior. But

**Ethics:** The concepts and beliefs about, and study of, right and wrong professional conduct.



## In Focus 3.1

### A LACK OF ETHICS: FLORIDA'S YOUTH SERVICES INTERNATIONAL PRIVATE PRISONS FOR YOUTH

In Florida, all of the juvenile prisons in the state are operated by private companies, and Youth Services International (YSI), a for-profit company owned by former hotelier James F. Slattery, operates about 9% of them (Kirkham, 2013). YSI also operates detention centers and boot camps. Slattery's company has been able to secure these contracts and many others in other states such as Georgia, Maryland, Nevada, New York, and Texas, worth more than \$100 million for the Florida contracts alone, despite the fact that the Justice Department has investigated complaints about them in several of these states. Auditors in Maryland found that YSI workers have encouraged fighting between inmates, and staff reportedly routinely fail to report "riots, assaults and claims of sexual abuse" (Kirkham, 2013). A Bureau of Justice Statistics report indicated that a YSI facility in Palm Beach, Florida, had the "highest rate of reported sexual assaults out of 36 facilities reviewed in Florida" (Kirkham, 2013). YSI had only 9% of the state contracts for youth beds in the state of Florida, but it had 15% of the cases of excessive force and injured youth (Kirkham, 2013). Local public defender's offices and the Southern Poverty Law Center have complained about the handling of youth and conditions at YSI facilities, with little response by the state. In an investigation by a *Huffington Post* (now *HuffPost*) reporter, in which official records were reviewed and former employees were interviewed, Kirkham (2013) found the following:

- Staff underreported fights and assaults to avoid scrutiny and the possible loss of contracts.
- Staff abused youth in the facilities by hitting and choking them, sometimes to the point of fracturing bones.
- Turnover of staff was high.
- Food was restricted and prepared incorrectly or in an unsanitary manner, and youth were encouraged to gamble with others to win their food portions.

When the reporter asked why, with this dismal record of care, YSI was continually offered contracts, the answer he received from those

concerned about the treatment of juveniles both inside and outside the state of Florida was that YSI supported the political campaigns of Florida's and other states' politicians with hefty donations. The company has donated more in Florida to politicians than two of the largest companies in the state:

[They donated] more than \$400,000 to state candidates and committees over the last 15 years, according to the *HuffPost*'s review. The recipient of the largest share of those dollars was the Florida Republican Party, which took in more than \$276,000 in that time. Former Florida Senate President Mike Haridopolos, an avid supporter of prison privatization, received more than \$15,000 from company executives during state and federal races. (Kirkham, 2013)

According to sources cited in the article, margins are narrow in the operation of correctional facilities (in other words, there is not a lot of fat in publicly operated prisons or jails), so if private prison companies want to make money for their owners and investors, it means they have to cut staff pay or benefits, slash programming, or feed people less, and it appears that all three of these things are happening at YSI facilities, indicating unethical (if not illegal) behavior by politicians, company managers, and correctional officers on the line (notably, as of 2016 the Department of Juvenile Justice has reportedly severed ties with YSI, and a perusal of their website in 2020 [<http://www.djj.state.fl.us/programs-facilities/residential-facilities>] does not show YSI operating any correctional facility for children).

### Discussion Questions

1. On the basis of the narrative, what factors led to the abuses reported in the YSI facilities?
2. What steps can be taken to reduce the incidence of such abuses in similar facilities?
3. How is staffing tied up in the nature and amount of the abuse?

Source: Based on Kirkham, C. (2013, October 22). Private prison empire rises despite startling record of juvenile abuse. *Huffington Post*, pp. 1-11.

you might ask (rightly!), What is right behavior? In a larger sense, it is what is legal (what the law is), and in an organizational sense, it is what is legal, too, but also what is allowed and not allowed according to codes of ethics and policies and procedures of that workplace. So a person could sexually harass others in the workplace (e.g., make negative comments about them or undermine their work because of their gender), but this behavior, though unethical and perhaps prohibited by the workplace code of ethics and policies and procedures, may not rise to the level of illegal behavior.

Morality, we should note, is not the same as ethics, as it concerns what is right or wrong in the personal sphere, whereas ethics is concerned with the professional sphere. People tend to base their beliefs about what is right or wrong, ethical or unethical, and moral or immoral on what they have learned from any number of sources. For instance, it is not difficult to figure out the right thing to do in the case of the death of Jason Echevarria (as showcased in the Policy and Research section), because what we have learned from our family, schools, religious teachings, workplace policies, or other sources has helped us determine our own sense of right and wrong in such instances.

**Deontological ethical systems:** Systems concerned with whether an act itself is good.

**Teleological ethical systems:** Systems focused on whether the consequences of an act are good.

## Ethical Foundation for Professional Practice

### LO 3.2 Describe the different ethical frameworks.

It is not clear how much of an ethical foundation most humans are born with, though it is clear that several institutions try to instill one in their members. The family is likely the most influential social institution to inculcate ethics and morality. Educational institutions, both K–12 schools and colleges, all in some way or another and usually in many ways, discuss what is right and wrong in many different situations. Diverse religions all convey a sense of right and wrong, and a key concept emanating from many of them is the Golden Rule, or “Do unto others as you would have done unto you.” Other institutions—such as the military, social and professional clubs, even kids’ sports teams, and, of course, the work environment itself—all strive to instill a moral or ethical framework in their members. The larger culture and life experiences doubtless also contribute to one’s sense of right and wrong.

Much of the research on ethics also reviews the theoretical bases for decisions involving ethics (Braswell, McCarthy, & McCarthy, 1991; Pollock, 1994, 1998, 2010; Rohr, 1989; Solomon, 1996). The philosophical touchstones that are referenced as guides to human decision making are ethical formalism, utilitarianism, religion, natural law, the ethics of virtue, the ethics of care, and egoism.

Moral behavior is shaped by both deontological and teleological ethical systems, and these touchstones are subsets of them. **Deontological ethical systems** are concerned with whether an act itself is good, and **teleological ethical systems** are focused on the consequences of an act. If the act itself is moral or ethical, then someone who is guided by a deontological framework is not concerned about the consequences of the act. It is enough to just act in a moral fashion. Someone who is guided by a teleological ethical system does not care so much about the rightness or the



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**Photo 3.1** A correctional officer opens a gate for an inmate. The security of an institution relies on the vigilance of officers when closing and locking gates.

wrongness of an act but about whether the consequences of the act are good. Pollock (1998, 2010) defined the ethical frameworks that derive from these ethical systems in her book *Ethics in Crime and Justice: Dilemmas and Decisions*.

## Ethical Formalism

Pollock (1998) defined **ethical formalism** as “what is good is that which conforms to the categorical imperative” (p. 48). Under this system, there is the belief that there is a universal law that includes clear rights and wrongs. The philosopher Immanuel Kant (1724–1804) noted that there is a categorical imperative requiring that each person act as they would like all others to act (very much like the Golden Rule mentioned in the foregoing). Kant also believed that people must seek to be guided by reason in their decision making. Ethical formalism falls under a deontological system, as the focus is on an act and its rightness (or wrongness), rather than on the consequences of the act and their goodness (or badness). It is a position that does not account for gray areas: An act is either right or it is wrong. So some acts, such as murder, lying, and stealing, are always wrong, even when the end of these acts is good.

**Ethical formalism:** Determines morality on the basis of a universal law that includes clear rights and wrongs.



## Policy and Research

### INMATE WITH A MENTAL ILLNESS DIES AT RIKERS

In a series of articles appearing in the *New York Times*, reporter Michael Schwartz (2014a, 2014b) documented the abuse and neglect suffered by inmates with mental illnesses incarcerated in the Rikers Island jails. The Rikers Island jails are a complex of 10 jails on an island in the East River of New York City. Twenty officers from Rikers have been prosecuted for assaults on inmates in the past 5 years. In mid-March 2014, an inmate with a mental illness died from being left in an overheated cell at Rikers. But the particular subject of these articles is a 25-year-old inmate named Jason Echevarria, who was diagnosed with bipolar disorder. He was placed in a special mental health unit at Rikers because of his diagnosed mental illness and because he had behavioral problems when in the general population of the jail. He had a record of attempted suicides while incarcerated at Rikers (Schwartz, 2014a, 2014b).

Because there were problems with raw sewage coming out of toilets, on August 18, 2012, inmates were given a packet of powdered detergent they were to use to clean up their cells (Schwartz, 2014a, 2014b). By policy, inmates were supposed to be given detergent that was diluted by several gallons of water, but an inexperienced officer instead gave the full packets to inmates. Echevarria swallowed the toxic detergent, and as a result, his tongue and mouth skin were severely damaged as he vomited; he experienced extreme pain and expelled blood

from his mouth over the course of several hours. A correctional officer claimed that he responded to Mr. Echevarria's cries for help by reporting his health problems to his captain, who told the correctional officer not to talk to him about this again unless the inmate was dead. Despite this warning, the correctional officer claimed that he reported to the captain twice more about the inmate's distress and even tried to call for medical assistance at least once but was prevented from doing so by the captain. Both the captain and the officer came off their shifts without getting any medical assistance for the inmate. Mr. Echevarria was dead the next morning. The medical examiner ruled that Mr. Echevarria's death was a homicide. The captain was demoted to an officer position, was arrested by the Federal Bureau of Investigation, and was prosecuted for violating the civil rights of Mr. Echevarria. The officer was fired and filed a wrongful termination suit, disputing the captain's claim that he was never told about Mr. Echevarria's health crisis.

### Discussion Questions

1. Why aren't correctional facilities well suited to handle people with mental illnesses
2. Rather than incarcerating people with mental illnesses, what should public policy be instead?



**Utilitarianism:** Determines morality on the basis of how many people were helped by an act.

**Religious perspective:** A perspective that weighs what is right or wrong on the basis of one's religion.

**Natural law:** Adherents of this framework believe that what is good is what is known to be so.

**Ethics of virtue:** A framework that emphasizes the virtue of one's character over actions.

## Utilitarianism

**Utilitarianism** is defined as “what is good is that which results in the greatest utility for the greatest number” (Pollock, 1998, p. 48). So morality is determined by how many people were helped by the act. The philosopher Jeremy Bentham (1748–1832) believed that people will do a “utilitarian calculus” regarding how much pleasure or pain a given act will garner, and they will act on that to maximize pleasure. But when one's pleasure conflicts with the greater good for society, then one must bow to the greater good under a utilitarian perspective. As utilitarianism is focused on the end—whether it is moral or immoral or ethical or unethical—achieved by an act, it falls under the teleological system.

## Religious Perspective

People who use a **religious perspective** to guide their decisions believe “what is good is that which conforms to God's will” (Pollock, 1998, p. 48). This is a perspective that weighs what is right or wrong on the basis of one's religion and covers all facets of living and relationships with others. How one treats others, how one lives one's life, and one's understanding of the meaning of life itself are all influenced by this religious perspective. Under this perspective, both the means and the ends are foci of interest and are perceived through the lens of what one believes one's god or gods would want. Most religions include a universal set of rights and wrongs, much like ethical formalism, and they have, as mentioned already, a form of the categorical imperative or the Golden Rule. Although there is widespread agreement across religions on some matters, there is much disagreement about social practices, such as drinking alcohol, dancing, eating certain kinds of foods, exhibiting certain behavior on holy days, and wearing clothing that may be deemed inappropriate as well as the political and social status of women and other minority groups, such as LGBTQ+ people.

## Natural Law

Adherents of an ethical framework based on **natural law** believe that “what is good is that which is natural” (Pollock, 1998, p. 48). Behavior is or should be motivated by what is universally understood to be right and wrong. Using reason, all humans can figure these rights and wrongs out. The major difference between a natural law believer and someone who is guided by a religious perspective is that, in the latter case, the supreme being or beings are the ones who determine what is right and wrong, whereas under a natural law perspective, these rights and wrongs are just clear and knowable through reason. Under this perspective, we know what truth and decency are, and so we just need to act on our natural inclination in that direction. These natural laws about what is right and wrong are believed to be cross-cultural and true over time; they are not relative to time or place. Moreover, out of these natural laws flow natural rights, such as those accorded to citizens under the Constitution of the United States.

## Ethics of Virtue

Believers in the **ethics of virtue** think that “what is good is that which conforms to the golden mean [the middle ground between positions]” (Pollock, 1998, p. 48). Instead of focusing on the nature of an action, the question here is whether a person is virtuous or good. The end to be achieved is to live a good and moral life by performing virtuous acts. Such virtues include “thriftiness, temperance, humility, industriousness, and honesty” (Pollock, 1998, p. 43). Models of virtue provide examples for those interested in living with integrity and according to a code of ethics.

## Ethics of Care

Relatedly, an **ethics of care** is centered on good acts. It is a deontological perspective. Those who subscribe to this framework believe that “what is good is that which meets the needs of those concerned” (Pollock, 1998, p. 48). Under this perspective, care and concern for others are paramount. This is a perspective that is regarded as more “feminine,” as it is believed that women, as a group, are more attuned to the needs of others. Carol Gilligan (1982) found in her research on moral development that women’s perspective differs from men’s in this area. Women are more likely to be concerned about the care of others as guiding how they behave. Peacemaking and restorative justice are thought to derive from the ethics of care framework.

**Ethics of care:** A framework centered on good acts in which care of and concern for others are paramount.

## Egoism

The last ethical framework Pollock (1998) mentioned is one based on the individual—namely, **egoism**. Under this framework, the needs of self are most important, so acting to satisfy one’s own wants and needs under this framework is acting ethically. As the act is the focus here, egoism falls under the deontological perspective. Even when acting on behalf of others, it is believed that one is acting out of *enlightened egoism*, or helping and caring for others so they will do the same for you when you are in need of assistance.

**Egoism:** Needs of the self are most important; acting to satisfy one’s own wants and needs is acting ethically.

## Why People Behave Unethically

### LO 3.3 Analyze why people are motivated to commit ethical violations.

Despite the influence of these ethical frameworks, there are several reasons why people behave unethically. The most obvious and perhaps the most common reason is for *personal gain* or *out of selfishness*. For instance, the owner of YSI, which managed private prisons for juveniles in Florida, clearly benefited financially from cutting staff salaries and inmate food (this has to be unethical, right?), and not surprisingly, the result was poorly operated and, at times, dangerous facilities (see In Focus 3.1). The captain supervising the Rikers Island jail mental health unit when Mr. Echevarria died, if he did what he is accused of—ignoring the desperate health needs of an inmate—behaved both criminally and unethically for selfish reasons: He did not want to be bothered (see the Policy and Research section). The remedy for such a motivation is multifaceted and will be discussed momentarily.

## Official Deviance

Another reason people in corrections might behave unethically is official deviance. **Official deviance** was defined by Lee and Visano (1994) as follows:

Actions taken by officials which violate the law and/or the formal rules of the organization, but which are clearly oriented toward the needs and goals of the organization, as perceived by the official, and thus fulfill certain informal rules of the organization. (p. 203)

**Official deviance:** When officials act in a way that benefits their organization but violates laws or formal rules.

Lee and Visano (1994) studied officials’ behavior in both the United States and Canada, and they found that many deviant acts by criminal justice actors are not committed for personal gain but are committed to help the organization or to be in compliance with subcultural goals. If the subculture values secrecy and protection of fellow officers, as is true for subcultures in corrections, then one might be called upon to lie, even on the witness stand and under oath, to protect an officer when they are charged with wrongdoing (Stohr & Collins, 2014). The important point here is that the organizational member who lies or

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a new manager (2 weeks on the job) of a public correctional institution (jail) that has experienced several ethical crises in the past year. Your jail has been sued twice successfully in the past year for overcrowding and neglect of the mental health needs of inmates. You were hired to “clean up”

the ethical environment of the facility, though you already recognize that the staff subculture in the jail is intransigent and resistant to change. What steps would you take to transform this jail to accomplish the desired change? What resistance do you expect to encounter, and how do you think it can be overcome?

engages in other acts of official deviance gains nothing from engaging in the deviance; it is the organization or other organizational members who benefit. The penalty for organizational members who refuse to engage in official deviance might be shunning, harassment, or even firing for unsubstantiated reasons. The remedies to reduce official deviance are noted in the following (after the discussion of noble cause corruption).

### Noble Cause Corruption

A third reason why criminal justice workers and corrections workers, in particular, might engage in unethical behavior is that they are motivated by noble cause corruption. Crank and Caldero (2000) defined the **noble cause** for police officers as this:

Profound moral commitment to make the world a safer place to live. Put simply, it is getting bad guys off the street. Police believe they’re on the side of angels and their purpose in life is getting rid of bad guys. (p. 35)

Crank and Caldero (2000) identified two noble cause themes that explain police officer behavior: “the smell of the victim’s blood” and “the tower” (p. 35). What they mean by the smell of the victim’s blood is that police officers are motivated to act to protect and save victims. But in the course of trying to protect victims, they may step over an ethical line and lie, plant evidence, or abuse force so as to catch the “bad guy” by whatever means. And it is always the ends (e.g., catching the bad guy) that are more important than the means (e.g., acting professionally and ethically) with noble cause corruption.

What Crank and Caldero (2000) meant by “the tower” is that police officers, when confronted with a shooter in a tower, will run to the tower (they will act in the face of danger) when everyone else is running from it. Because they are inclined to run to the tower—metaphorically, at least—and also because their job requires that they act in dangerous situations, they may cross the ethical and legal line by overreacting or making rash decisions. They will “run to the tower” because they want to make things right. Crank and Caldero (2011) and others (e.g., Bartollas & Hahn, 1999; O’Connor, 2001) have said that the police are motivated by their desire to make the world right. They tend to see the world in black and white, and when a suspect interferes with this perception, the police might engage in unethical behavior because it is inspired by acting in the cause of “rightness.” The problem is that the police are not always right, and they cannot always see what is right (as with all of us).

Noble cause corruption, as an explanation for unethical behavior by corrections workers, makes a great deal of sense. One of the authors, when working in a male prison as an officer many years ago, was told right away which inmates were in for “child molesting,”

**Noble cause:** A profound moral commitment to make the world a safer place to live.

though this information was supposedly confidential between the counselors and their clients (see the related story that appears at the beginning of this chapter). It was boldly stated that such inmates were not to be treated with respect by staff and were to be regarded with an additional dose of suspicion. Interactions with other correctional professionals over the years, in all kinds of correctional settings, reinforced this experience that correctional staff are motivated in their actions by “the victim’s blood,” especially when that victim is a child.

People who are attracted to work in corrections are also doers and people who want to make the world right. They will not hesitate to “run to the tower” to accomplish this feat either. We know of several stories of officers in federal prisons, state prisons, and jails who were thrilled to be called to engage in the quelling of altercations in corrections. These are stories of correctional staff who enthusiastically “ran to the tower” to “make the world right,” but at least in a few of these cases, those officers admitted that more force by staff was used to stop fights and put down disturbances than was strictly necessary. Once the fists started flying, adrenaline took over, and the sense that force was being used to do good made its use, even its excessive use, justified.

Noble cause corruption, as with official deviance and deviance for selfish ends, is all the more likely to occur in environments where the behavior of actors is hidden and little supervised and the clients are powerless. These factors all accurately describe correctional environments. Most correctional work is done in some isolation from the larger community, and this is particularly true of prisons and jails. Even community correctional officers operate in environments in which the interactions are personal, and their content is not documented. Supervisors’ span of control is stretched, and they don’t always have adequate time to review an individual actor’s behavior. Correctional clients are some of the most powerless people in the United States. By law, they have very few rights and legal protections, and thus, they are subject to the behavior of both ethical and unethical correctional personnel. Top all of these organizational and individual characteristics off with the fact that correctional staff have a great deal of **discretion** (defined here as the ability to make choices and to act or not act on those choices), and there is only one more ingredient necessary to make the perfect admixture for unethical behavior: the influence of a negative subculture.

## Subculture

In fact, a key feature of correctional environments that would make staff and management more prone to engage in unethical behavior is the presence of a strong negative **subculture**. Subcultures are subsets of larger cultures with their own norms, values, beliefs, traditions, and history. They can be positive in their promotion of prosocial values and support of their members, but they can also be negative when they promote antisocial values and, in correctional work (or police work, too), unethical behavior. In an ethics training course conducted by one of the authors and a colleague for probation and parole managers, the participants identified several barriers to ethical practice in their workplaces. Most of these barriers Kauffman (1988, pp. 85–112) identified in his study of correctional officers, and Pollock (1994, p. 195) did so in her text on ethics and the negative side of subcultures (see In Focus 3.2).



TIM SLOAN/AFP via Getty Images

**Photo 3.2** Law enforcement and others involved with maintaining public safety often find themselves running into dangerous situations.

**Discretion:** The ability to make choices and to act or not act on them.

**Subculture:** A subset of a larger culture, with its own norms, values, beliefs, traditions, and history.



## In Focus 3.2

### SUBCULTURAL VALUES OF PROBATION AND PAROLE OFFICERS

In ethics training exercises in 1994 and 1995, probation and parole managers in a western state identified the subcultural values of the community corrections officers they supervised (Stohr & Collins, 2009). They were as follows:

1. Always aid your coworker.
2. Never rat on coworkers.
3. Always cover for a coworker in front of clients.
4. Always support the coworker over the client in a disagreement.
5. Always support the decision of a coworker regarding a client.
6. Don't be sympathetic toward clients. Instead be cynical about them (to be otherwise is to be naive).
7. Probation or parole officers are the "us" and everyone else is the "them," including administration, the media, and the rest of the community.
8. Help your coworkers by completing your own work and by assisting them if they need it.
9. Since you aren't paid much or appreciated by the public or the administration, don't be a rate buster (i.e., don't do more than the minimal amount of work).
10. Handle your own work, and don't allow interference. (p. 63)

#### Discussion Questions

1. Which of these subcultural values do you think makes the workplace better for staff but can lead to unethical behavior?
2. How might correctional managers and workers concerned about unethical behavior in the workplace prevent some of the most destructive of these values from being embraced in the workplace?

## How to Prevent Unethical Behavior and Promote Ethical Work Practices

**LO 3.4** Identify why corrections workers might be prone to ethics violations and how they might be prevented.

As you can see, a few of these subcultural values are positive in that they provide support of coworkers, but the ones that support coworkers can also lead to unethical behavior if the coworkers are wrong or engaged in wrongdoing vis-à-vis their clients or the work. Supporting coworkers, no matter what they do, can promote an unethical work environment. Most of the managers at that ethics training session reported that unethical behavior was common on the job and ranged from the routine, like rudeness to clients and their families, to the rare, like lying on reports and verbal and physical abuse of clients. The subcultural values listed before, however, made it difficult for managers to address the unethical behaviors.

This is why the organizational and individual remedies to prevent unethical behavior, whatever its motivation and despite the subculture, are multifaceted and include at least these:

1. Hire people who are less likely to be motivated by personal gain. To do this, correctional organizations need well-developed selection processes, with extensive background checks on potential hires (Stohr & Collins, 2014).



2. Pay people a professional wage, as then they will be less likely to be tempted to engage in unethical behavior for personal gain.
3. Encourage professional development of employees through further education, training, and engagement in professional organizations, as employees who are immersed in a professional and learning subculture are more likely to encourage positive change in others and improve the workplace, and they may be less likely to be tolerant of a workplace subculture that fosters unethical behavior.
4. Develop an ethics code with employee input, and review it regularly in the department. By involving a cross-section of staff in the development of an ethics code, more staff are likely to feel like they “own it” and therefore support it.
5. Require extensive training in ethics at the beginning of employment and throughout an employee’s career. More and ongoing training will reinforce the need to behave ethically, and it will undercut negative subcultural influences.
6. Supervise people sufficiently, and check up on what they are doing and how they are doing it.
7. Provide support for positive changes in the workplace that will enhance the ability of workers to do the job right. Sometimes staff will claim that they cannot act ethically because there are not enough resources (e.g., time or staff) to do so; by ensuring there are enough resources—and this is hard to do in the public sector these days—managers make it possible for employees to do the work the right and ethical way.
8. Discipline violators of ethics, and if the violation of the rules or law is serious enough, fire them. Doing this will reinforce a positive subculture that is supportive of ethical work practice.
9. Promote those who behave ethically, and include ethics-related measures in evaluations. By doing this, managers will motivate all to support ethical practice.
10. Encourage whistle-blowing (the reporting of wrongdoing or problems in the workplace), and make it possible for people to do so anonymously. Despite an ethical manager and workers’ best efforts, there is sometimes illegal or unethical behavior going on in the workplace, and because of the power of subcultures, correctional workers need to be able to report this behavior without fear of reprisal.
11. Develop the means for all employees to provide input into the decisions that are made by and for the organization, as doing so is more likely to be a check on management; it uses the knowledge workers have; instills ownership of the work by those who do it; and leads to greater job satisfaction, less turnover, and more commitment to the job (Stohr & Collins, 2014).
12. Encourage involvement of outsider review and professional engagement (have an oversight board; support involvement in professional organizations; and provide access to researchers,



Mikael Karlsson/Alamy Stock Photo

**Photo 3.3** Corrections officer interacting positively with an inmate.

politicians, and the media), as more openness is more likely to reduce unethical behavior and defuse the power of negative subcultures.

By using these remedies, the correctional manager and, where applicable, the correctional worker are more likely to turn the subculture into a positive support system that promotes ethical behavior. The remedies are also likely to increase professionalism and reduce abuse of clients.



## In Focus 3.3

### THE ABUSE OF SOLITARY CONFINEMENT IN FLORIDA

In March 2016, the Florida American Civil Liberties Union (ACLU) sent a letter to the U.S. Department of Justice Civil Rights Division requesting a federal investigation into the overuse of solitary confinement (also known as restricted housing and isolation) by the Florida Department of Corrections (FDOC; Simon & Wetstein, 2016). They noted that fully one in eight inmates in Florida prisons were held in solitary confinement. They also found that the numbers revealed a potential racial bias for men and women and those diagnosed with mental illnesses in Florida prisons, as African Americans were overrepresented among those in solitary when compared with the number of Black people in the general population. They also found that about 23% of those with mental illnesses in Florida prisons were kept in solitary confinement. Notably, much of this information was obtained through Freedom of Information Act requests, not provided voluntarily by the FDOC. Finally, the ACLU detailed a number of cases, from several prisons, in which inmates with mental illnesses and others placed in solitary died because of neglect or outright torture by correctional staff. Some of those cases from the ACLU letter (Simon & Wetstein, 2016) are summarized here:

Randall Jordan-Aparo died in 2010 “after being gassed three times while in a solitary confinement cell” (p. 4). He had been ill and was denied medical care despite the knowledge that he had a rare blood disorder.

Rommell Johnson died in 2010 after being gassed twice with chemical agents within a 5-minute span of time. He was asthmatic, and the medical examiner ruled that he died as a result of the gassing, which brought on a fatal asthma attack.

Darren Rainey died in 2012 “when he was tortured in a locked shower rigged to be controlled by guards from the outside, with

its water temperature at approximately 180 degrees” (p. 4). Though his skin was literally falling off of his bones when he was found in the shower, the medical examiner ruled the death “accidental,” and no one has been disciplined or fired as of March 2016.

Latandra Ellington died in 2014, alone in a solitary confinement cell, reportedly from heart disease. Her family claimed that she had no heart problems. “She had been placed there after she filed a complaint alleging that Sgt. Patrick Quercioli had engaged in sex with another prisoner, and threatened to kill Ellington” (p. 5). The family-sponsored autopsy found no heart disease “but found excessive bruising, and a lethal level of Amlodipine, a blood pressure medication, in her system” (p. 5).

Yalex Tirado died in solitary confinement in 2014 in a prison for juveniles, with no explanation for his death provided by the facility. “This is a prison where, as the Miami Herald has reported, the sodomizing of inmates with broomsticks by other inmates has been common, and where nine guards have been charged over the last two years with battery or facilitating the entry of contraband” (p. 5).

According to a study by Yale Law School professors, in 2015 Florida was not the state that used solitary confinement most (it was ninth in the country, with about 8% of its adult population in some form of solitary confinement, and Louisiana was first with about 14%; Flagg, Tatusian, & Thompson, 2016, p. 1).

### Discussion Questions

1. How likely do you think it is that these deaths and the abuse of solitary are isolated incidents and not representative of regular practice in

these Florida prisons? What evidence do you have to support your argument?

2. If you had witnessed abuses such as these, what action, if any, would you have taken to stop them?
3. If staff are found to be guilty in the deaths of these inmates, what punishments do you think

they deserve? Do you think that the staff who witnessed these kinds of abuses but did not report them should also be disciplined in some way? Why, or why not?

*Source: Adapted from Simon, H., & Wetstein, S. (2016, March 11). Civil rights groups call for federal investigation into solitary confinement abuse in Florida prisons. Miami: ACLU of Florida*

## War on Drugs = Attack on Ethics?

**LO 3.5** Discuss the impact the war on drugs has in creating ethical challenges in the field of corrections.

Wars are a popular thing for politicians to wage. Wars on poverty, crime, and drugs were the brainchildren of several presidents and carried on by others since the 1960s. The terminology of war is powerful and connotes a level of serious attention to a topic that few other terms convey. Campaigns, assaults, and offensives are waged in wars with some urgency behind them. A war means that all available resources and attention will be devoted to that effort, and those who do not agree, well, are like traitors to a righteous cause. Yet these political wars, somewhat like wars waged with weaponry made of steel, are problematic, as they are fighting social ills—poverty, crime, and substance abuse—which, though admittedly harmful, are somewhat intractable and very complex and therefore require sustained effort and multifaceted solutions. Because of the nature of the problems, wars on them never seem to end because the problems do not end. Though the Iraq War seemed never to end (lasting at least 8 years), consider that the war on drugs was first mentioned by President Nixon in 1971 and has been waged by every president since. We currently spend at least \$51 billion each year on the war on drugs in this country, and that does not account for the millions who have passed through correctional doors as enemy combatants in the war and the billions it has taken to pay for their arrest, prosecution, and incarceration; nor does it account for the lost tax revenue and disrupted families and lives the war has left in its wake (the collateral damage). Many scholars, commentators, and even politicians now consider the war on drugs to be an abject failure in that it has not reduced the supply or use of illicit drugs, and instead, it has galvanized the illegal drug trade and corrupted government officials in this country and in Mexico and Central and South America (Cullen, Jonson, & Stohr, 2014). According to the Drug Policy Alliance (2019a, 2019b), an organization whose mission is to end the war on drugs, the following outcomes have resulted from the war on drugs:

- Amount spent annually in the United States on the war on drugs: more than \$51 billion
- Number of people arrested in 2014 in the United States on nonviolent drug charges: 1.56 million



**Photo 3.4** The war on drugs led to drug seizures like these.

Gordon M. Grant / Alamy Stock Photo

- Number of people arrested for marijuana law violations in 2014: 700,993
- Number of those charged with marijuana law violations who were arrested for possession only: 619,809 (88%)
- Number of Americans incarcerated in 2014 in federal, state, and local prisons and jails: 2,224,400, or 1 in every 111 adults, the highest incarceration rate in the world
- Proportion of people incarcerated for drug offenses in state prison who are Black or Hispanic, although these groups use and sell drugs at similar rates as white people: 57%
- Number of people killed in Mexico's drug war since 2006: more than 100,000
- Number of students who have lost federal financial aid eligibility because of drug convictions: more than 200,000
- Number of people in the United States who died from drug overdoses in 2014: 47,055
- The Centers for Disease Control and Prevention found that syringe access programs lower the incidence of HIV infection among people who inject drugs by 80%. One third of all AIDS cases in the United States have been caused by syringe sharing: 360,836 people. U.S. federal government support for syringe access programs is \$0.00, thanks to a federal ban reinstated by Congress in 2011 that prohibits any federal assistance for them.

Other collateral effects of the drug war (Drug Policy Alliance, 2019b) include the following (see also Figure 3.1):

- Nearly 80% of people in federal prison and almost 60% of people in state prison for drug offenses are Black or Latinx.
- A 2015 report by Human Rights Watch found that deportations for drug possession offenses increased by 43% from 2007 to 2012.
- Simple marijuana possession was the fourth most common cause of deportation for any offense in 2013 and the most common cause of deportation for drug law violations. More than 13,000 people were deported in 2012 and 2013 just for marijuana possession.
- One in 13 Black people of voting age are denied the right to vote because of laws that disenfranchise people with felony convictions.
- One in 9 Black children has an incarcerated parent, compared with 1 in 28 Latinx children and 1 in 57 white children.

So the point is that the war on drugs has been a huge resource suck, which has distracted our attention from drug treatment and real prevention, punished people with substance use disorders, disproportionately incarcerated racial-ethnic minority group members, and likely cost trillions of dollars over time. (It has been going on for 48 years at the time of this writing.) More to the point, it has challenged the ethical behavior of corrections officials by forcing them to overincarcerate some relatively minor offenders who got caught in its net (notably, we have seen some retreat in this war as far as cannabis is concerned—several states have legalized either, and sometimes both, its medical or recreational use).

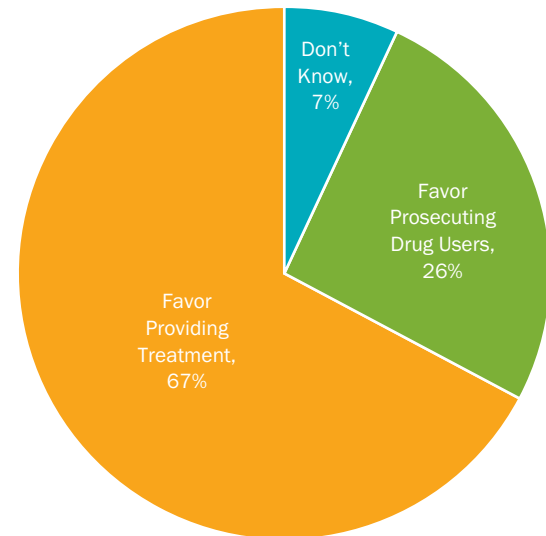


Correctional workers in prisons, jails, and detention centers or working in probation and parole and even their managers have little to no control over whom they are given to incarcerate or supervise in communities. But they are affected by the drug war because their facilities and caseloads have been crowded by such offenders, which has made carrying out their tasks very difficult and sometimes ethically challenging. They have been involved in drug monitoring and treatment to a much greater extent than if the war had not been waged. They have had to supervise people who—compared with robbers and rapists—do not really merit the use of incarceration and perhaps even community supervision. Therefore, we would add one more remedy to the list that will help organizations prevent unethical behavior, but this remedy must be understood by policy makers: Consider the likely outcomes of wars or other grand schemes on the ethics of the actors or soldiers tasked with carrying them out, and consider the larger social impact of waging war on your own citizens.

**FIGURE 3.1** Public Views on Drug Policy in the United States

Source: Pew Research Center (2014). Most recent data available.

Note: Survey conducted February 14–23, 2014.



## ? Ethical Issue

WHAT WOULD YOU DO?

You are a probation officer with a large caseload of low-level drug offenders (mostly pot smokers). Some may be addicted to marijuana, and others may not, but you need to monitor them and ensure that they attend programming and provide clean urinalysis (UA) samples. The department of corrections you work for is in transition, however, moving from more of a law enforcement focus to a greater treatment orientation. They have given you and other officers more leeway in decisions about whether to violate (write up) offenders who commit minor offenses. One of the UAs you take comes up dirty for marijuana, and you are

faced with “violating” a client on your caseload who was convicted of felony drug possession (there was enough to sell). In all other ways, this client has done well, in that she has made all the meetings, been employed, and attended drug programming. Would you write a violation on this offender? (Doing so may result in jail time or a trip to prison.) Would it make any difference in your decision making if your client has two dependent children who will be placed in foster care should she be incarcerated? Why, or why not? Which ethical framework do you think best fits the decision you made?

## SUMMARY

**LO 3.1** Explain the differences between ethics and morality.

- Ethics encompasses the concepts and beliefs about, and study of, right and wrong professional conduct.

- Morality is not the same as ethics, as it concerns what is right or wrong in the personal sphere, whereas ethics is concerned with the professional sphere.



**LO 3.2** Describe the different ethical frameworks.

- Deontological ethical systems are concerned with whether an act itself is good. Ethical formalism is a deontological ethical framework that determines morality on the basis of a universal law that includes clear rights and wrongs. Ethics of care is another deontological framework centered on good acts in which the care of and concern for others are paramount. Egoism places the needs of self as most important; acting to satisfy one's own wants and needs is acting ethically.
- Teleological ethical systems are focused on whether the consequences of an act are good. Utilitarianism is an ethical framework that determines morality on the basis of how many people were helped by an act. The religious perspective is another teleological framework that weighs what is right or wrong according to one's religion. Natural law is also from a teleological viewpoint; adherents of this framework believe that what is good is what is known to be so. Ethics of virtue is a teleological framework that emphasizes the virtue of one's character over actions.

**LO 3.3** Analyze why people are motivated to commit ethical violations.

- Ethical work practice is a messy business—sometimes clear-cut but often fraught with anxiety. The nature

of corrections work and the organization's attendant subcultures often create situations in which ethical dilemmas are common and their resolution difficult. Moreover, the kinds of people hired in corrections work, those with a noble cause bent, are sometimes more susceptible to engaging in ethical abuses, though that is not their intent.

**LO 3.4** Identify why corrections workers might be prone to ethics violations and how they might be prevented.

- To reduce or avoid unethical behavior, hire people who are not motivated by personal gain, encourage professional development and ethics training, provide proper supervision and support, discipline ethics violations, promote ethical behaviors and interactions, and involve employees in decision making.

**LO 3.5** Discuss the impact the war on drugs has in creating ethical challenges in the field of corrections.

- The war on drugs has placed a strain on the judicial and legal systems. Victims are placed in a system, and charges are often disproportionate to the crimes. They are often unable to get the help needed to get them out of the system and overburden the resources, drawing time and attention away from more violent criminal activity.

## KEY TERMS

Deontological ethical systems 64  
Discretion 69  
Egoism 67  
Ethical formalism 65  
Ethics 62

Ethics of care 67  
Ethics of virtue 66  
Natural law 66  
Noble cause 68  
Official deviance 67

Religious perspective 66  
Subculture 69  
Teleological ethical systems 64  
Utilitarianism 66

## DISCUSSION QUESTIONS

1. Where do we learn our sense of right and wrong? Why do you think that some sources are more powerful in influencing people than others?
2. What makes the correctional workplace more susceptible to unethical behaviors than most workplaces? If you were to work in corrections, how would you make sure that you always made the "right decision"?
3. What can organizations do to prevent noble cause corruption? Do you think you are a person who could be corrupted this way?
4. Which ethical framework best describes your feeling about ethics? Why do you think this is applicable to you?
5. Discuss how the drug war has affected corrections and how it has threatened the ethical practice of workers.







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# 4

## Sentencing The Application of Punishment

### TEST YOUR KNOWLEDGE

Test your current knowledge of the criminal sentencing process by answering the following questions as true or false. Check your answers on page 386 after reading the chapter.

1. Basic principles of justice mandate that the criminal justice system punish every person convicted of committing the same crime equally regardless of other differences.
2. The only concern at sentencing is the severity of the crime the defendant has committed.
3. Three-strikes laws allow states to possibly imprison for life a person who has been convicted of a third felony.
4. If a person is convicted of two different crimes committed on two different occasions, they must be sentenced to consecutive terms (one to be served after the other is completed) of probation or prison.
5. Because victims or their survivors can unfairly prejudice a judge against a defendant, with the exception of death penalty cases, victims or survivors cannot have any input into the sentencing decision.
6. Except for statutory limitations, judges basically must decide on appropriate sentences for convicted felons without any guidance or advice.
7. Black people and other racial-ethnic minorities are frequently subjected to discriminatory sentencing.
8. Separate courts exist for criminals with special problems such as drug addiction.
9. All states use guidelines to help judges make sentencing decisions.

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 4.1 Explain how modern sentencing engages Aristotle's notion of justice.
- 4.2 Describe the different types of sentencing and their rationales.
- 4.3 Identify other sentencing options and how they are applied.
- 4.4 Explain the role of problem-solving courts.
- 4.5 Assess the issues surrounding sentencing disparity.
- 4.6 Identify the purpose of presentence reports and sentencing guidelines as well as the contentious issues surrounding them.
- 4.7 Explain the purpose and use of sentencing guidelines.
- 4.8 State factors that may affect the future implementation and use of sentencing guidelines.

### VINDICTIVE VERSUS SENSIBLE SENTENCING

"Jane" is a 30-year-old mother of three children aged 8, 6, and 4. Her husband recently suffered a heart attack and died, leaving Jane with no money. Jane has only a 10th grade education and cannot afford child care costs, so she was forced onto the welfare rolls. When Christmas came around, she had no money to buy her children any presents, so she took a temporary Christmas job at the local megastore, where she earned \$1,200 over a 2-month period. Jane did not report this income to the welfare authorities as required by law, and a welfare audit uncovered her crime. The terrified and deeply ashamed Jane pleaded guilty to grand theft, which carries a possible sentence of 2 years in prison, and was referred to the probation department for a presentence investigation report (PSI).

(Continued)

(Continued)

“Jim” is a 32-year-old man with a lengthy record of thefts and other crimes committed since he was 10 years old. Jim also pleaded guilty before the same judge on the same day and was likewise referred for a PSI. Jim had stolen money and parts totaling \$1,200 from an auto parts store during one of his brief periods of employment.

These two cases point to a perennial debate about the appropriate sentence for people who commit the same crime. Recall the classical and positivist schools of thought discussed in Chapter 1. Although both positions are ultimately about the role of punishment, the classical position maintains that punishment should fit the crime and nothing else. That is, all people convicted of identical crimes should receive identical sentences regardless of any differences they may have. The classical position maintains that Jane and Jim freely chose to commit the crimes, and the fact that Jim has a record and Jane does not is *irrelevant*. The positivist position is that punishment should fit the offender and be appropriate to rehabilitation. Jane’s and Jim’s crimes were motivated by very different considerations; they are very different people morally, and blindly applying similar punishments to similar crimes without considering the possible consequences is pure folly. Think about these two cases and your own position on them as you read about the purpose of sentencing, the way sentencing guidelines are structured, and the uses of the PSI.

**Sentence:** A punitive penalty ordered by the court after a defendant has been convicted of a crime either by a jury, by a judge, or in a plea bargain.

**Justice:** A moral concept of just or fair treatment consisting of “treating equals equally and unequals unequally according to relevant differences.”

## Introduction: What Is Sentencing?

### LO 4.1 Explain how modern sentencing engages Aristotle’s notion of justice.

*Sentencing* refers to a postconviction stage of the criminal justice process. A **sentence** is the punitive penalty ordered by the court after a defendant has been convicted of a crime by a jury, by a judge in a bench trial, or in a plea bargain. Sentencing typically occurs about 30 days after conviction. The goals of sentencing are to implement one or more of the punishment philosophies discussed in Chapter 1: retribution, deterrence, incapacitation, or rehabilitation. In some states juries may be entitled to pronounce sentences, but in most states, and in federal court, sentencing is performed by a judge—except in death penalty cases, in which it is the jury’s responsibility. The penalties meted out at sentencing can include various forms of probation coupled with fines and restitution orders and/or treatment orders, house arrest or electric monitoring, work release, jail time, prison time, or the death penalty, all of which are discussed elsewhere in this book. The severity of the penalty depends on the crime or crimes of which the defendant is convicted and the extent of their criminal history, although other factors, both legitimate and illegitimate, may also come into play.

It is a major concern of the American criminal justice system that punishments received by defendants at sentencing should be consistent with justice. **Justice** is a moral concept that is difficult to define, but in essence it means that people must be treated in ways consistent with norms of fairness and in accordance with what they justly deserve by virtue of their behavior. Perhaps the best definition was provided by the Greek philosopher Aristotle many centuries ago: “Justice consists of treating equals equally and unequals unequally according to relevant differences” (cited in Walsh & Stohr, 2010, p. 133). In terms of sentencing, this means that those who have committed the same crime and have similar criminal histories are considered legal “equals” and should be treated equally. Those who have committed different crimes and have different criminal histories are considered legal “unequals” and therefore should be treated unequally; that is, one should be treated either more leniently or more harshly than the other.



You may ask what these “relevant differences” are and who defines them. Strictly speaking, the relevant differences in sentencing should be limited to legally relevant factors (crime seriousness and prior record), but extralegal factors are often also brought into play, such as gang affiliation, a history of substance abuse, and a person’s rehabilitative potential (as the opening vignette suggests). Depending on what these factors are, justice is either served or not served by adding them. A judge who sentences a remorseful mother—whose children would become wards of the state if she were sent to prison—to probation rather than to prison is probably acting justly. This may be so even if the same judge sentences to prison an unremorseful single man who has committed the same crime and has an identical criminal record as the mother and, thus, the judge is treating legal equals unequally. On the other hand, if the judge sentences legal equals unequally only because one defendant is a woman and the other is a man, or only because one defendant is Black and the other is white, then the judge is not acting justly.



**Photo 4.1** Fairness in sentencing is often a difficult goal to attain, with many factors to consider, such as the type of crime committed and the criminal history of the offender.

Sergii Gnatiuk/Shutterstock.com

## Types of Sentences: Indeterminate, Determinate, and Mandatory

### LO 4.2 Describe the different types of sentencing and their rationales.

The prison sentence a person receives can be indeterminate or determinate. An **indeterminate sentence** is one in which the actual number of years a person may serve is not fixed but rather is a range of years, such as the person “shall be imprisoned for not less than 2 or 3 years to 10 years.” More serious crimes move both minimum and maximum time periods upward. Indeterminate sentences were previously much more common than they are today, but a number of states still retain this system. Indeterminate sentences fit the positivist rehabilitation philosophy of punishment because they allow offenders to be released after they have served their minimum period if they demonstrate to the parole board’s satisfaction they have made efforts to turn their lives around. Such sentences are tailored to the offender and aimed at rehabilitation rather than tailored to the crime and designed to be strictly punitive.

The indeterminate sentencing model prevailed most strongly under the so-called medical model, whereby offenders were considered “sick” and in need of a cure. Because some criminals may be “sicker” than others, the time made available for the “cure” must be flexible. Offenders who behaved themselves in prison and could demonstrate that they were “reformed” could be rather quickly released; ill-behaved and stubborn offenders might need to serve the upper boundary (10 years in the above example) and be released whether “rehabilitated” or not. It has been precisely because of its flexibility that indeterminate sentencing has been accused of contributing to sentencing disparity. For instance, even if two offenders receive the same sentence of “2 to 10 years,” one may serve only 2 years because they can keep out of trouble and know how to play the rehabilitation/parole game, while the other,

#### **Indeterminate sentence:**

A prison sentence consisting of a range of years to be determined by the convict’s behavior rather than one of a fixed number of years.

who does not play the game as well, may serve 2 or 3 more years. Supporters of the model, however, will reply that it is not the judiciary that is at fault (after all, both offenders were sentenced identically by judges); rather, it is the inmates themselves who caused the discrepancy by their different behaviors while incarcerated.

Prisoners released from state prisons in 1996 had served an average of only 44% of their sentences under predominantly indeterminate sentencing structures (Ditton & Wilson, 1999). Rising crime rates during the 1980s and early 1990s saw a groundswell of opposition to what many saw as “mollycoddling” criminals, and there were many calls for longer sentences. In response to public demands, most states enacted **truth-in-sentencing laws**. These laws require there be a truthful and realistic connection between the custodial sentences imposed on offenders and the time they actually serve. They also mandate that inmates serve at least 85% of their sentences before becoming eligible for release. In addition, many states restricted good time credit and/or parole eligibility under these laws.

Determinate sentences became more prevalent after the enactment of truth-in-sentencing laws. A **determinate sentence** means that convicted individuals are given a fixed number of years they must serve rather than a range. Under a determinate sentencing structure, the maximum prison time for a given crime is set by the state legislature in state statutes. This structure is more in tune with the classical notion that the purpose of punishment is to deter and that all who commit the same crime must receive a fixed sentence. This does not mean that everyone convicted of the same crime receives the same set penalty. For instance, the maximum time for burglary may be set at 15 years, and a repeat offender may be sentenced to the full 15 years. Another person who is a young first offender may receive only 5 years. Whatever the sentence, offenders know under this sentencing structure how much time they will need to serve. Longer and more determinate sentences satisfy the urge for greater punishment for offenders and serve an incapacitation function. However, time off for good behavior is still granted.

Another type of sentencing is **mandatory sentencing**, sometimes known as mandatory minimum sentencing. Mandatory sentencing can exist in the context of both determinate and indeterminate sentencing structures and simply means that probation is not an option for some crimes, and the minimum time to be served is set by law. It is set by law because legislative bodies in various states have decided that some crimes are just too serious for probation consideration (certain violent crimes) or have decided there is a particular problem, such as drug trafficking or the use of a gun during the commission of a crime, that requires mandatory imprisonment as a deterrent.

Prison sentences imposed for two separate crimes, whether they occurred during the same incident (e.g., robbery and aggravated assault) or in different incidents (e.g., two separate burglaries), can be ordered to be served concurrently or consecutively. A **concurrent sentence** is one in which two separate sentences are served at the same time. If the robbery and aggravated assault crimes both carry sentences of 10 years, for instance, the offender’s release date would be calculated on the basis of 10 years rather than 20 years. A **consecutive sentence** is one in which two or more sentences must be served sequentially (one at a time). If the robber/aggravated assaulter received two 10-year sentences to be served consecutively, their release date would be based on 20 rather than 10 years. Therefore, consecutive sentences increase the time a person spends in prison. The judge’s decision to impose concurrent or consecutive sentences for persons convicted of two crimes may rest mainly on factors such as the seriousness of the crimes, criminal history, plea bargain arrangements, and offender cooperation. Some have suggested that judges may actually impose harsher sentences on those offenders with the audacity to demand a trial rather than accept a plea bargain, because it makes extra work for the judge. This philosophy has been expressed as the judge’s warning—“You take some of my time and I’ll take some of yours” (Neubauer, 2008).

**Truth-in-sentencing laws:** Laws that require that there be a truthful, realistic connection between the sentences imposed on offenders and the time they actually serve.

**Determinate sentence:** A prison sentence of a fixed number of years that must be served rather than a range.

**Mandatory sentence:** A prison sentence imposed for crimes for which probation is not an option, where the minimum time to be served is set by law.

**Concurrent sentence:** A sentence in which two separate sentences may be served at the same time.

**Consecutive sentence:** A sentence in which two or more sentences must be served sequentially.

## Habitual Offender Statutes

**Habitual offender statutes** (or “three-strikes-and-you’re-out” statutes) are derived from the same punitive atmosphere that led to truth-in-sentencing statutes. These statutes essentially mean that offenders with third felony convictions may be sentenced to life imprisonment regardless of the nature of the third felony. This is a way of selectively incapacitating felons only after they have demonstrated the inability to live by society’s rules. This all sounds fine until we factor in the financial costs of these sentences. Few of us would be against the life-time incarceration of seriously violent offenders, but many states include relatively minor nonviolent crimes in their habitual offender statutes. For instance, the U.S. Supreme Court upheld the life sentence of a felon under Texas’s habitual offender statute even though the underlying felonies involved nothing more serious than obtaining a total of less than \$230 over a 15-year period by false pretenses (fraudulent use of a credit card and writing bad checks) in three separate incidents (*Rummel v. Estelle*, 1980). Very few of us would consider this a just sentence, and apart from the disproportionate nature of the sentence, the cost to the taxpayers of Texas of keeping Rummel in custody is many thousand times greater than the \$230 he fraudulently obtained.

### **Habitual offender statutes:**

Statutes mandating that offenders with third felony convictions be sentenced to life imprisonment regardless of the nature of the third felony.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a prosecutor in a state with a strict three-strikes law. You have been assigned the case of 46-year-old Billy Banks, who has been arrested and charged with burglary. Billy has two previous felony convictions—one for auto theft and a previous burglary conviction—although you know he has committed many other crimes. Billy shoplifted merchandise worth \$145 from a local department

store. This amount is low enough to charge Billy with a misdemeanor petty theft, but because he admitted to entering the store with the express purpose of shoplifting, he was charged with a burglary, which is defined as “the unlawful entry of a structure to commit a felony or theft.” What are the pros and cons of charging Billy under the three-strikes law? And with what crime would you charge him?

A life sentence still carries with it the possibility of parole, but some life sentences are imposed as **life without parole (LWOP)**. Such sentences may seem popular with the public at large until taxpayers get the bill. There were 206,268 serving LWOP and what the Sentencing Project calls “near life” sentences in 2016 (The Sentencing Project, 2017). LWOP sentences are usually imposed on those convicted of murder, but habitual property offenders have also been given such sentences. Long-term incapacitation of violent and/or habitual offenders is sound policy, but how much time is enough? In one large-scale study, only one fifth of “lifers” who were released after long stays (15–30 years) in prison were rearrested within 3 years, compared with two thirds of nonlifers who were released (Mauer, King, & Young, 2004). Old age is the best “cure” for criminal behavior we have, so perhaps releasing lifers after 20 to 30 years of imprisonment is both humane and fiscally responsible. Given the ever increasing medical needs of people as they age, older inmates add a highly disproportionate financial burden on taxpayers.

### **Life without parole (LWOP):**

A life sentence with the additional condition that the person never be allowed parole.

## Other Types of Sentences: Shock, Split, and Noncustodial Sentences

### LO 4.3 Identify other sentencing options and how they are applied.

**Shock probation:** A type of sentence aimed at shocking offenders into going straight by exposing them to the reality of prison life for a short period followed by probation.

**Split sentences:** Sentences that require convicted persons to serve brief periods of confinement in a county jail prior to probation placement.

Judges have many sentencing options open to them besides straight imprisonment. The fact is that more than 90% of sentences imposed in our criminal courts do not involve imprisonment (Neubauer, 2008). One type of sentence that does include imprisonment is shock incarceration, also called **shock probation**. This type of sentence is used to literally shock offenders into going straight by exposing them to the reality of prison life for a short period, typically no more than 30 days, followed by probation. Shock probation is typically reserved for young, first-time offenders who have committed relatively serious felonies but who are considered redeemable.

**Split sentences** are sentences that require felons to serve brief periods of confinement in a county jail prior to probation placement. Jail time may need to be served all at once or spread over a certain period, such as every weekend in jail for the first year of probation placement. This is designed to show offenders that jail is a place to stay away from and thus to convince them that it would be a good idea to abide by all the conditions imposed by the court. Another form of split sentence is work release, whereby a person is consigned to a special portion of the jail on weekends and nights but is released to go to work during the day. Thus, these mainly noncustodial sentences typically mean a probation sentence coupled with certain conditions that must be followed in order to remain in the community. The conditions may involve such things as paying fines, paying restitution, attending drug and/or alcohol treatment programs, doing community service, remaining gainfully employed or looking for work, and any number of other more specific conditions. These different noncustodial sentences and probation conditions will be discussed more fully in the chapters on probation, parole, and treatment.

## Victim Impact Statements

**Victim impact statement:** A statement made by persons directly affected by a crime (or victims' survivors in the case of murder) to inform the court of the personal and emotional harm they have suffered as a result of the defendant's actions and, in some states, to make a sentencing recommendation.

In 1982, President Ronald Reagan created the President's Task Force on Victims of Crime. One of the outcomes of this was the inclusion of victim impact statements (VISs) at sentencing. A **victim impact statement** allows persons directly affected by the crime (or victims' survivors in the case of murder) to inform the court of the personal and emotional harm they have suffered as a result of the defendant's actions and, in some states, to make a sentencing recommendation. VISs are typically incorporated into PSIs written for the court by probation officers. The opportunity to provide input into the sentencing decision and the recognition that the harm is suffered by individuals, not the state, is considered a valuable aid in the emotional recovery of victims and may even aid the rehabilitation of some defendants by forcing them to confront the harm caused by their actions (Walsh, 1986).

VISs have been challenged as prejudicial and a return to a more conservative punitive stance toward punishment because such statements can lead to sympathy for the victim and hostility toward the defendant (Paternoster & Deise, 2011). However, in *Payne v. Tennessee* (1991), the Supreme Court upheld the constitutionality of VIS testimony in the sentencing phase of a trial, and all 50 states now include the use of VISs in the form of written or oral statements at sentencing. But how influential are they in terms of the actual sentence imposed? Overall, the evidence is ambiguous, although in capital cases, in which juries rather than judges decide the sentences, they seem to be influential (Paternoster & Deise, 2011). Research in noncapital cases tends to show that VISs actually have little effect on sentencing decisions after accounting for the effects of legally

relevant variables (seriousness of crime and prior record) (Walsh, 1986). This sometimes leads to resentment and dissatisfaction with the sentencing process when victims (or their survivors) believed their recommendations would carry more weight than they did (Meredith & Paquette, 2001).

## Problem-Solving Courts

### LO 4.4 Explain the role of problem-solving courts.

**Problem-solving courts** are alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as drug, alcohol, domestic violence, and mental health problems. These courts originated during the late 1980s to early 1990s in response to burgeoning rates of incarceration, the financial costs of incarceration, the realization that many offenders needed treatment rather than jail or prison, and the woeful inability of the social services system to provide that treatment. The traditional criminal courts have long seen the same individuals with the same problems recycle through them time after time. Problem-solving courts are designed to address the underlying causes of a person's antisocial behavior under the assumption that it will cease or diminish with the alleged cause under control. These courts largely suspend the adversarial approach to justice in the interests of achieving a therapeutic outcome. In other words, the judge, prosecutor, and defense attorney are supposed to work together collegially along with treatment specialists and supervising probation or parole officers to achieve a common goal: the rehabilitation of the offender. These courts thus promote outcomes aimed at benefiting offenders, victims, and society as a whole by both saving jail and prison costs and minimizing the probability of reoffending. Problem-solving courts thus are novel responses to deal with problems that affect the probability of further criminal behavior. According to the Bureau of Justice Assistance (2013), problem-solving courts are characterized by the following:

#### **Problem-solving courts:**

Alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as alcoholism and mental health problems.

- *Focus on outcomes:* Problem-solving courts are designed to provide positive case outcomes for victims, society, and offenders (e.g., reducing recidivism, creating safer communities).
- *System change:* Problem-solving courts promote reform in how the government responds to problems such as drug addiction and mental illness.
- *Judicial involvement:* Judges take a more hands-on approach to addressing problems and changing behaviors of defendants.
- *Collaboration:* Problem-solving courts work with external parties to achieve certain goals (e.g., developing partnerships with mental health providers).
- *Nontraditional roles:* These courts and their personnel take on roles or processes not common in traditional courts. For example, some problem-solving courts are less adversarial than traditional criminal justice processing.
- *Screening and assessment:* Use of screening and assessment tools to identify appropriate individuals for these courts is common.
- *Early identification of potential candidates:* Use of screening and assessment tools to determine a defendant's eligibility for a problem-solving court usually occurs early in a defendant's involvement with criminal justice processing.



**Drug court:** A special sentence for drug-related nonviolent offenders who must then complete an extensive drug treatment program.

## Drug Courts

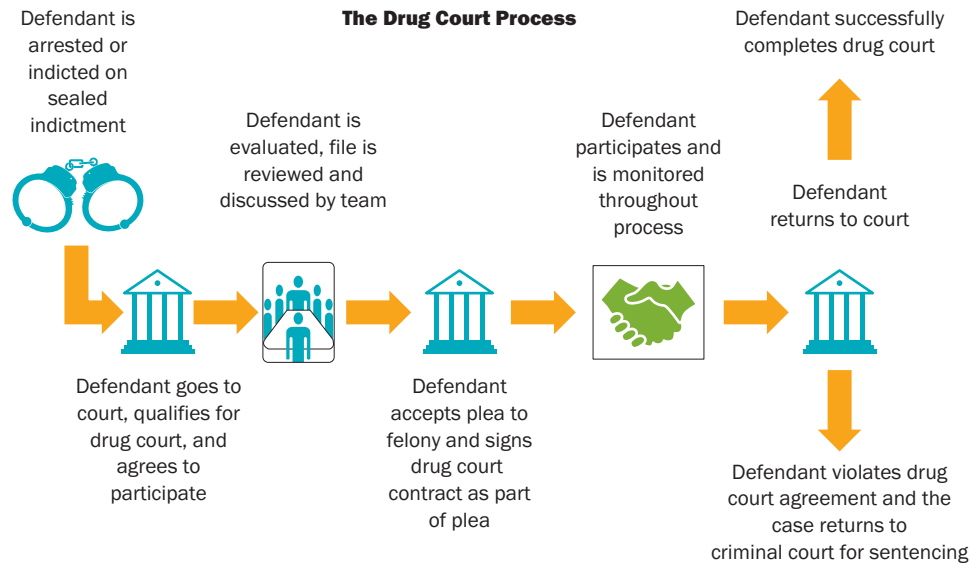
Drug courts are by far the most common form of problem-solving court in the United States. In response to the growing drug problem, the first drug court was established in Miami-Dade County, Florida, in 1989. Twenty years later, there were 2,037 drug courts active in all 50 states, growth that suggests there is much that is positive about drug courts (Mackin, Lucas, & Lambarth, 2010). A referral to a **drug court** requires the offender to be involved in an intensive treatment program that lasts 2 years. Participants typically have pleaded guilty to non-violent drug-related felony charges. Under the supervision of the judge, probation officers, and other caseworkers, participants attend counseling groups and 12-step meetings, regularly appear before a judge, and must submit to random urine testing. If a participant successfully completes the program, in nearly all jurisdictions the criminal charges will be dismissed. The U.S. Department of Justice (Ashcroft, Daniels, & Herraiz, 1997) provided the 10-component model presented below for state and county agencies implementing their drug court systems:

1. Drug courts integrate alcohol and other drug treatment services with justice system case processing.
2. Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.
6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
10. Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court effectiveness.

The drug court processes from arrest to final outcome (either graduation or termination and incarceration) are graphically shown in Figure 4.1 from the Albany, New York, drug court. The first stage of the process is a referral to the drug court, typically from an offender's attorney. With the receipt of the referral, members of the drug court team review the applicant's criminal history and police reports relevant to the current offense and other pertinent information. Violent offenders and offenders who have previously committed the same offense or who have failed other treatment programs before will not be accepted into most drug court programs. A standardized form containing all the gathered information is sent to members of the drug court team for review at a weekly staff meeting. After reviewing a case, members of a drug court team vote to accept or reject an offender's application. If the offender is accepted into a program, the case is referred to a probation officer, who then performs a prescreening interview. The officer will listen to the defendant and observe his or her behavior and attitudes in order to assess the level of desire to change their lifestyle. The officer will provide a rundown of the drug court program and ascertain an offender's

■ **FIGURE 4.1** Case Flow From Arrest to Court Termination in the Albany, New York, Drug Court

Source: Adapted from Albany County Judicial Center, <http://albanycountyda.com/Bureaus/RevJohnUMillerOR/CommunityProsecution/drugcourtprocess.aspx>



willingness to abide fully with the program's guidelines in order to achieve sobriety. Most offenders, it should be understood, lack the personal skills associated with success in any endeavor, so the prospect of participating in an arduous treatment program in which they will be held strictly accountable is often daunting to them. Offenders who, by their words and actions, give the impression that they do not take responsibility for their behavior and have no desire to change will not be accepted.

As a result of their frequent interactions during court appearances, it is expected that participants will develop rapport with the judge, who speaks directly to them in an informal way, asking about their progress and either exhorting them to try harder or praising their accomplishments. The judge will also remind them of the obligation to remain drug free and may impose sanctions for ongoing drug use or other behavior that impedes progress toward sobriety. These sanctions may include jail time and/or dismissal from the program, in which case the offender receives the agreed-on prison sentence. The judge will ultimately decide the defendant's fate—graduation or incarceration.

Graduation from drug court takes place with as much fanfare as a typical college graduation ceremony. Commenting on the graduation of 54 drug, DUI (driving under the influence), and veterans treatment court graduates recognized at a ceremony in Tulsa, Oklahoma, Bland (2014) wrote,

Drug Court saved Clark Dagnall's life. In return, the 26-year-old Sand Springs resident took the stage at the program's most recent graduation and promised to pay it forward by helping others. "My goal is just to help the next addict," he told the crowd of graduates' friends and family members. "Maybe I can get through to somebody that nobody else could."

Graduates received certificates of graduation for completing the nearly 2-year program. Bland (2014) also wrote that the graduates who spoke at the ceremony were grateful for the support and guidance they received in the program, and the drug court staff expressed their

AP Photo/The Evansville Courier &amp; Press, Erin McCracken



**Photo 4.2** A judge awards a graduation certificate for a drug court program.

pride in the graduates. “We watch these individuals transform and rise from the ashes,” said Lawrence Gilbert, Action Steps Counseling program coordinator.”

Note the strong emphasis on inter-agency cooperation, the provision of services to participants, and the strict monitoring of their behavior. In addition to saving states many millions of dollars in jail and prison costs, drug courts appear to be quite successful in reducing recidivism. For instance, the Baltimore County Juvenile Drug Court outcome analysis (Mackin et al., 2010) estimated that the program saved the county \$8,762 per participant over 24 months because of lower recidivism rates and savings from incarceration.

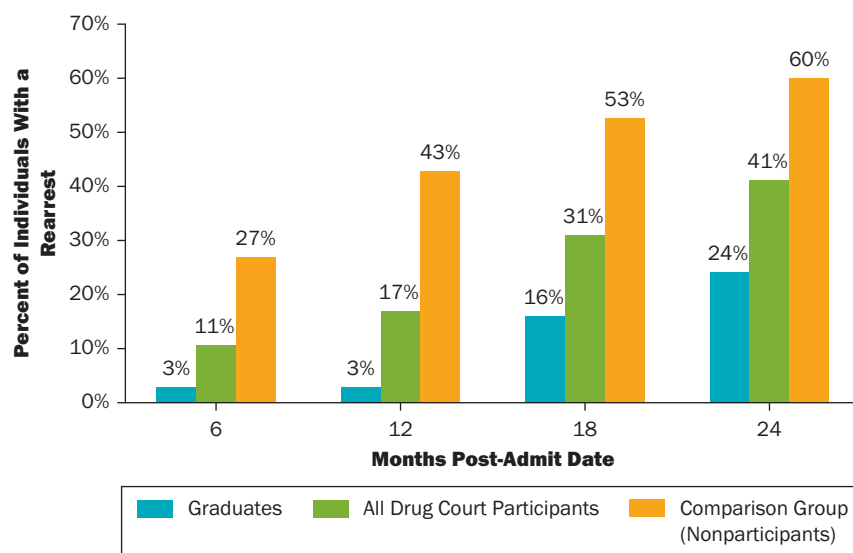
Figure 4.2 provides an illustration of recidivism outcomes for drug court graduates,

participants who did not graduate, and a control group consisting of juveniles who fit the criteria for participation. Note that while the likelihood of rearrest increased for all groups over time, the graduates had a lower arrest rate at 24 months than the control group did at 6 months.

Roman’s (2013) study of drug courts in 29 different U.S. jurisdictions showed that drug court participants were significantly less likely to test positive for drugs than other probationers (29% vs. 46%) and less likely to be rearrested (52% vs. 62%). Roman also noted that the cost per drug court participant was significantly higher per year (\$15,326) for drug court participants than for comparison probationers (\$7,191), but that was offset by lower costs in other areas such as the costs of further crime and victimization. Overall, the net financial

**FIGURE 4.2** Comparison of Rearrest Rates for Juvenile Drug Court Participants and Nonparticipants at 6 Through 24 Months After Admittance

Source: Mackin et al. (2010).



benefit per participant spread over all 29 jurisdictions in Roman's study was \$5,680 compared with control probationers. If there were only 100 participants, this would amount to an average saving of \$1.36 million over 2 years, which is the usual duration of such courts. This is without even considering the emotional costs of criminal victimization. Other studies have found that compared with traditional probation, drug courts reduce overall recidivism by 12.4% to 13.0% for drug-related recidivism (Mitchell, Wilson, Eggers, & MacKenzie, 2012).

A meta-analysis of 201 different studies (Sevigny, Fuleihan, & Ferdik, 2013) found that drug courts reduce jail and prison incarceration by 32%. Putting this in a nationwide perspective, the researchers reported this results in 9,911 fewer incarcerations among the estimated 52,777 annual drug court participants across the United States. However, these lower incarceration rates were offset by the longer sentences imposed on participants who fail. Nevertheless, in addition to saving the states many millions of dollars in jail and prison costs, drug courts appear to be quite successful in reducing recidivism.

## Sentencing Disparity, Legitimate and Illegitimate

### LO 4.5 Assess the issues surrounding sentencing disparity.

**Sentencing disparity** occurs when there is wide variation in sentences received by different offenders. This disparity is legitimate if it is based on considerations such as crime seriousness and/or prior record, but it is discriminatory if it is not. We think of sentencing disparity as discriminatory if there are differences in punishment in cases in which no rational justification can be found for them. The biggest concern is racial discrimination. There is no doubt that the American criminal justice system has a dark history of racial discrimination, but does this indictment still apply?

African Americans receive harsher sentences on average than white or Asian American offenders, a fact often seen as racist, but is it? Sentencing variation according to race is reasonable and just if the group being more harshly punished commits more serious crimes and does so more often than other groups, but it is discriminatory and unjust if that group does not. All data sources show that African Americans commit more crime, especially violent crime, than white people or Asians. For instance, the 2019 Uniform Crime Reports (Federal Bureau of Investigation, 2019) show that African Americans were overrepresented in arrests for all crimes, especially violent crime, in 2018 except for DUI.

But the question is whether this racial disproportionality in offending is sufficient to account for the disparity in sentencing. One sentencing scholar concluded that it was not: "Racial bias continues to pervade the U.S. criminal justice sentencing system [although] the effects of this bias are somewhat hidden . . . or may even have less to do with the race of the defendant than with the race of the victim" (Kansal, 2005, p. 17). Another scholar concluded the opposite: "Although critics of American race relations may think otherwise, research on sentencing has failed to show a definitive pattern of racial discrimination" (Siegel, 2006, p. 578). Some found that the more stringent researchers are in taking into effect the legally relevant variables of crime seriousness and criminal record, the less likely they are to find racial discrimination (Siegel, 2006). A more recent study of over 322,000 cases by the United States Sentencing Commission (2018), however, found that after controlling for a variety of relevant factors, Black males received longer sentences than similarly situated white males, and that female offenders of all races received shorter sentences than white male offenders. Different researchers thus arrive at different conclusions, often as a result of the quality of data and ideology.

Sentencing research is complicated and typically reports average effects, among which are multiple interacting variables hiding specifics. For instance, victim characteristics play a role; if the victim is a child, is older, has a disability, or is female, the sentence is typically

**Sentencing disparity:** Wide variation in sentences received by different offenders that may be legitimate or discriminatory.

harsher (Hatch & Walsh, 2016). The extent to which victims participate in sentencing via victim impact statements also generally leads to harsher sentences (Haynes, 2011). Political ideology also plays a role, with more conservative “law and order” jurisdictions sentencing more harshly across the board (Ulmer, 2012). Wu and Walsh (2007) found that conservative probation officers recommended harsher sentences (regardless of race) than liberal officers and that judges followed the recommendations of both sets of officers closely. A study of the sentencing practices of 18 Ohio judges found that half of them took no extralegal facts into consideration at all, 5 judges sentenced Black people more leniently, and 4 judges sentenced Black people more harshly (Wooldredge, 2010). The harsh and lenient judges just cancel each other out if researchers look only at the overall record of all judges and ignore individual judges.

One study of more than 46,000 federal defendants in 23 states found no evidence of racial bias after controlling for crime seriousness and prior record (Wang & Mears, 2010), although Jordan and Freiburger (2015) maintained that studies continue to show people of color are sentenced more severely than white people. So, is there racial discrimination involved in sentencing? The short answer is that it depends on the quality of the data, where you look, how hard you look, and even what you expect to find on the basis of your assumptions.

Table 4.1 shows the average length in months of felony sentences in state courts in 2006 broken down by race and gender (Durose, Farole, & Rosenmerkel, 2010). You can see that Black men have longer sentences than white men and that men have longer

**TABLE 4.1** Average Length of Felony Sentences in 2006 by Offense, Race, and Gender (in Months)

| MOST SERIOUS CONVICTION OFFENSE  | MEAN MAXIMUM SENTENCE LENGTH FOR PERSONS WHO WERE: |        |       |        |
|----------------------------------|--|--------|-------|--------|
|                                  | WHITE  |        | BLACK |        |
|                                  | MALE   | FEMALE | MALE  | FEMALE |
| All offenses                     | 40   | 25     | 45    | 25     |
| Violent offenses                 | 75   | 52     | 88    | 41     |
| Murder/nonnegligent manslaughter | 265  | 225    | 266   | 175    |
| Sexual assault                   | 115  | 72     | 125   | 32     |
| Robbery                          | 89   | 61     | 101   | 54     |
| Aggravated assault               | 42   | 30     | 48    | 29     |
| Other violence                   | 43   | 55     | 41    | 17     |
| Property offenses                | 31   | 22     | 35    | 23     |
| Burglary                         | 41   | 29     | 50    | 34     |
| Larceny                          | 24   | 17     | 23    | 19     |
| Fraud/forgery                    | 27   | 22     | 27    | 23     |
| Drug offenses                    | 31   | 22     | 36    | 22     |
| Possession                       | 21   | 17     | 25    | 15     |
| Trafficking                      | 39   | 26     | 40    | 27     |
| Weapon offenses                  | 34   | 24     | 34    | 24     |

Source: Durose et al. (2010).



sentences than women. Also note that for violent offenses, white women receive longer sentences than Black women. However, no conclusions about racial or gender bias can be drawn from the table, because it tells us nothing about how serious each of the crimes was (some robberies, sexual assaults, and assaults are far more vicious than others, for instance), nor does it tell us anything about the criminal histories of the men and women represented in the table.

One of the biggest concerns in the sentencing disparity literature is the huge difference in sentencing received by crack possession versus sentences imposed for possession of powder cocaine. Of particular concern was the difference in sentencing imposed on those who used or sold the cheaper crack cocaine, who tended to be racial-ethnic minority group offenders, particularly African Americans, versus those who used or sold powder cocaine, which tended to be more expensive and more likely used and trafficked by white offenders. In 1988, Congress passed the Anti-Drug Abuse Act, which established a 100-to-1 quantity ratio differential between powder and crack cocaine. That act also specified that simple possession of crack cocaine was to be treated more seriously than simple possession of other illegal drugs. According to a U.S. Sentencing Commission report to Congress in 1995, in 1986 Congress was reacting to media hype about how addictive crack was, with congressional members claiming that crack use was at “epidemic” levels, “crack babies” were severely impaired, and crime related to crack use was out of control in some cities. African American law professor Randall Kennedy informs us that the Congressional Black Caucus strongly supported the legislation and actually pressed for even tougher penalties (Kennedy, 1998). It is sensible to conclude that members of the Congressional Black Caucus were deeply concerned about how crack was decimating Black communities across the country with addiction and bloody turf wars over distribution territories. Nevertheless, at the time of this 1995 report, the U.S. Sentencing Commission (1995) knew that “88.3 percent of the offenders convicted in federal court for crack cocaine distribution in 1993 were Black and 7.1 percent were Hispanic,” and critics were concerned that instead of fair and evenhanded sentences for all, the effect of the Anti-Drug Act was to be unfair and harsh in the sentencing of racial minorities (p. 1).

Criticisms of the different treatment of people convicted of possession of pharmacologically identical drugs resulting in the increased incarceration of people of color for longer periods of time mounted to the point at which Congress needed to do something. In 2009, the **Fair Sentencing Act** was introduced and passed by Congress and signed into law by President Barack Obama on August 3, 2010. Under the act, the amount of crack cocaine subject to the 5-year minimum sentence is increased from 5 to 28 grams, thereby reducing the 100-to-1 ratio to an 18-to-1 ratio (28 grams of crack gets as much time as 500 grams of powder cocaine). Thus, there is still a large sentencing differential between possessors of crack and possessors of powder cocaine. This ratio probably reflects lawmakers’ perceptions that crack is more intimately related to violence (in territorial battles) and to a higher probability of addiction than the powder variety (Leigey & Bachman, 2007).

Further efforts to make sentencing fairer and rehabilitative occurred on December 21, 2018, when President Trump signed into law the **First Step Act**. The act seeks to improve criminal justice outcomes such as reducing the federal prison population (the act applies only to the federal system) and creating rehabilitative mechanisms to maintain public safety. A number of changes to the penalties for some federal offenses are made by the act, including the modification of mandatory minimum sentences for drug traffickers with prior drug convictions. It also increases the threshold for prior convictions that count toward triggering higher mandatory minimums for repeat offenders, reducing the 20-year mandatory minimum for offenders with one prior conviction to a 15-year mandatory minimum. It also reduces a life-in-prison mandatory sentence for offenders with two or more prior convictions to a 25-year mandatory minimum.

#### **Fair Sentencing Act of 2010:**

An act mandating that the amount of crack cocaine subject to the 5-year minimum sentence be increased from 5 to 28 grams, thereby reducing the 100-to-1 ratio to an 18-to-1 ratio (28 grams of crack gets as much time as 500 grams of powder cocaine).

**First Step Act:** An act signed by President Trump that seeks to improve criminal justice outcomes such as reducing the federal prison population (the act applies only to the federal system) and creating rehabilitative mechanisms to maintain public safety.

The First Step Act also makes the 2010 Fair Sentencing Act retroactive for currently incarcerated offenders who received longer sentences for possession of crack cocaine than they would have received if sentenced for possession of the same amount of powder cocaine before the enactment of the Fair Sentencing Act. Furthermore, the act expands the safety valve provision, allowing courts to sentence low-level, nonviolent drug offenders with minor criminal histories to less than the required mandatory minimum for an offense. It also calls for the greater use of halfway houses and home confinement for low-level and older offenders (Federal Bureau of Prisons, 2019).

As with all legislation, there are supporters and detractors. Prisoners' rights groups say it doesn't go far enough, and victims' rights supporters say it goes too far. The latter group point to the case of Joel Francisco, who was released under the act, tested positive for drugs three times thereafter, and subsequently knifed a man to death in Rhode Island (Amaral & Mulvaney, 2019). The First Step Act is not perfect; after all, it is called the "first step," and there is always a risk when violent offenders are released back onto the streets. The only way to guarantee that reoffending doesn't happen is to keep all inmates locked up for life, and the United States is not about to engage in such a totalitarian policy.

## Structuring Sentencing: The Presentence Investigation Report

**LO 4.6** Identify the purpose of presentence reports and sentencing guidelines as well as the contentious issues surrounding them.

**Presentence investigation report:** Report written by the probation officer informing the judge of various aspects of the offense for which the defendant is being sentenced as well as providing information about the defendant's background (educational, family, and employment history), character, and criminal history.

To assist judges in sentencing, a **presentence investigation report** (PSI; or sometimes PSIR) is commonly used. Some states mandate a PSI for all felony cases, some only in certain felony cases, and others only at the request of the sentencing judge. There are few documents as important to the defendant as the PSI. It is used for many other purposes besides sentencing, such as treatment planning, classification to supervision levels in probation and parole departments and prisons, and parole decisions (Walsh & Stohr, 2010). A PSI is usually completed in 30 days or less so that the convicted individual can be sentenced in a timely manner. PSIs are usually written by probation officers, informing the judge of various aspects of the offense for which the defendant is being sentenced as well as information about the defendant's background (educational, family, and employment history), gang ties, substance abuse, character, and criminal history. Because of plea bargaining, judges typically know very little about the circumstances of the offense or the offender. On the basis of this information, officers make recommendations to the court regarding the sentence the offender should receive. Because probation officers enjoy considerable discretionary power relating to how their reports are crafted to be favorable or unfavorable to offenders, many scholars view them as the agents who really determine the sentences that offenders receive (Champion, 2005). Other researchers, however, suggest that the high rate of judicial agreement with officer recommendations reflects an anticipatory effect, whereby officers become adept at "second guessing" a judge's likely sentence for a given case and recommend accordingly (Durnescu, 2008).

In Focus 4.1 is an example of a (fictional) PSI containing the usual required information. PSIs come in a variety of lengths, the shortest being a 1- or 2-page short-form report used in misdemeanor cases or less serious "run-of-the-mill" felony cases. For serious or complicated cases, we may see 10- to 15-page reports, although the trend is toward shorter reports. The report given here is an example of a midrange report used for relatively serious crimes, although the trend is for shorter, more concise reports focusing primarily on legally relevant variables. This is, in effect, moving away from individualized justice.



## In Focus 4.1

### EXAMPLE OF A PSI

#### Gem County Adult Probation Department

Williamstown, Iowa 74812

Name: Joan Place Judge: Franklin Riley

Indictment No.: CR 6742 Probation Officer: James Smith

Age: 28 Attorney: William Paley

Race: white

Sex: female Offense: forgery

Marital Status: divorced Conduct (IRC #2908) two counts

#### Circumstances of the Offense:

On 8/10/94, Mr. John Smith, security operative for the Omaha Trust Company (OTC), reported to the police that the defendant cashed forged checks in the amount of \$917.00 at various OTC branch banks. These checks were drawn against the account of one Mrs. Patricia DeValera, 4561 Black St. The defendant stole Mrs. DeValera's checks while employed by her as a nurse's aide. Mr. Smith also indicated that the defendant cashed forged checks in the amount of \$575.00 on the account of Mr. Richard Blane, a former boyfriend of the defendant. The total loss to the Omaha Trust bank is \$1,492.00.

#### Defendant's Version:

The defendant's written statement is reproduced verbatim below: "Took checks filled it out in amount I needed for drugs and signed it, forged a name and cashed the checks in Aug. of 1994. No, I did not pay back the person. I was so drug dependent that I took my boyfriends checks, Mrs. Devaleras checks too. All I could live for at the time was heroin and alcohol (mainly beer). I'm sorry I did these things, normally I wouldn't of forged the checks if I wouldn't of needed drugs. All I could do was live for drugs. I've been threw the withdrawals of drugs when I put myself in the treatment center on Wilson St." It is noted that the defendant places the blame for her criminal activity on her craving for heroin and alcohol. Her statements of remorse ring rather hollow in light of her new forgery arrest while undergoing presentence investigation. She was arrested on this new charge on 2/22/95 and released on \$1,000 bond (10% allowed). Upon learning of this new arrest, I

rearrested her on 2/24/95 and placed her in the county jail, where she has been ever since.

#### Prior Record:

Juvenile: None known

Adult:

8-18-94 OPD Forgery, 5 counts, amended to one count: present offense

11-6-94 OPD Forgery, 3 counts, pending under CR841234

2-5-95 OPD Forgery, pending

Above record reflects juvenile, OPD, BCI, and FBI record checks.

#### Present Family Status:

The defendant is the fourth of five children born to Ann and Frank Place. Her father passed away in January of 1991. On 6/17/85, the defendant married one James Fillpot. Mr. Fillpot was described as a heavy drug abuser and is now serving a life sentence on an aggravated murder charge (he was convicted of murdering the defendant's alleged lover). The defendant divorced Mr. Fillpot shortly after his 1989 conviction, and shortly thereafter (6/89), she married one Ralph Burke. Mr. Burke is an alcoholic with an extensive criminal record. After an extremely abusive 2 years of marriage, the defendant's second marriage ended in divorce on 5/12/92. No children were born to either of these marriages. At the time of her arrest, the defendant was living with her mother at the above listed address.

#### Present Employment or Support:

The defendant is unemployed at the present time and was existing on \$76.00 in food stamps at the time of her arrest. She receives no general relief monies. Her last period of employment was as a nurse's aide for Mrs. DeValera, one of the victims of the present offense. This employment was for the period encompassing March through August, 1993. The defendant's longest period of employment was with the Red Barron Restaurant, 3957 Laskar Rd., as a waitress from March 1988 through November 1991. This employer has not responded to our request for information as yet.

(Continued)

(Continued)

**Health, Physical:**

The defendant describes her current physical health as “O.K.” She relates no significant hospitalizations, diseases, or current health problems with the exception of her substance abuse. Her substance abuse is quite extensive. She claims that she has used anywhere from \$20 to \$300 per day on heroin. Needle marks on her arms attest to her frequent usage. She also relates that she likes to consume 6 to 12 beers per night, which she claims that she receives free from boyfriends. Her substance abuse goes back to her first marriage 13 years ago when Mr. Fillpot introduced her to heroin. Her second husband, Mr. Burke, got her heavily involved in alcohol. She admits that she has experimented with many other drugs, but states that heroin and beer are her drugs of choice. This officer contacted the Wilson Street Drug Rehabilitation Facility regarding the defendant’s claimed attendance there. It appears that she did voluntarily admit herself there, but left after the first 15-day phase. I also made an effort to get her into the ROAD drug rehabilitation program. However, after two interviews with ROAD personnel, the defendant was denied admission because they thought that her only motive for seeking admission was her current legal difficulties.

**Health, Mental:**

The defendant is a 1981 graduate of Borah High School. She graduated 287th out of a class of 348. She attained a cumulative GPA of 1.64 on a 4.0 scale. Although no IQ information is available, the defendant impresses as functioning well within the average range of intelligence as gauged by her written and verbal statements. She did indicate that she was easily led and that she does not think much of herself. Her choice of marriage partners (both very abusive to her) and her current boyfriends give the impression that she is attracted to men who will verify her low opinion of herself.

**Statutory Penalty:**

N.R.C. 2913.31  
Forgery “shall be imprisoned for a period of 6 months, 1 year, or 1 and one-half years and/or fined up to \$2,500.”

**Evaluative Summary:**

Before the court is a 28-year-old woman facing her first felony conviction. However, she has numerous other forgery charges pending at this time. There would seem to be little doubt that the genesis of her criminal activity is her severe abuse of alcohol and drugs. She also appears to possess a low concept of herself as indicated by her very poor choice of marriage partners, both of whom were serious substance abusers and both of whom were physically abusive to her. She appears to be intimately involved in the drug subculture. I initiated the procedure to get the defendant admitted to the ROAD residential drug treatment center. However, after conducting two interviews with the defendant, personnel from the ROAD decided that her motivation for seeking treatment was her current legal difficulties and thus her application was denied. They did indicate that they would reconsider her application after the disposition of the present offense. Therefore, I recommend that the defendant be placed on probation, ordered to pay complete restitution, and to pursue entry into the ROAD. It is also recommended that she remain in the county jail after sentencing to reinitiate her application with ROAD.

|                                     |                                     |
|-------------------------------------|-------------------------------------|
| Approved                            | Respectfully Submitted              |
| <hr/>                               | <hr/>                               |
| James F. Collins<br>Unit Supervisor | Joyce Williams<br>Probation Officer |

**PSI Controversies**

Although the PSI has generally been considered a positive aid to individualized justice, it is not without its problems. Because the future of a defendant depends to a great extent on the content of the report, the information contained therein should be reliable and objective. All pertinent information must be verified by cross-checking with more than one source, and those sources should be reliable. The officer must be careful in the terms they use to describe the offender. The use of phrases such as “morally bankrupt” and “sweet young lady” may reveal more about the officer’s attitudes and values than the defendant’s character.

If you were the subject of a PSI, would you like to see what was in it so that you could challenge any erroneous information harmful to you contained in it? There have been a number of arguments for and against allowing defendants and their attorneys access to PSIs. It is feared that if victims and other informants from whom the investigating officer has sought information know that the offender will see their comments, they will refuse to offer their information; thus, the judge would not have complete information on which to make the sentencing decision. However, 16 states currently require full disclosure; other states require disclosure but erase information that may lead to retaliation, such as the officer's recommendation and negative comments from informants. Despite objections and real concerns about confidentiality, the trend is to allow defendants access to their PSIs. For instance, in the federal system, Section 3552 of the U.S. Code states,

The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.

In the federal system and in some state systems, probation and parole officers no longer write PSIs. Rather, they merely complete sentencing guidelines and certain other assessment tools and calculate the presumed sentence (Abadinsky, 2009). This and a number of other factors may be signaling a move away from individualized justice (the idea that punishment should be tailored to the individual and be consistent with rehabilitation) and back to the classical idea discussed in Chapter 1 that the punishment should fit the crime and serve as a retributive or deterrent factor.

## Ethical Issue

### WHAT WOULD YOU DO?

You are a probation officer writing a PSI on 29-year-old Robert Jackson, who was arrested for carrying a concealed weapon. Robert is very concerned about his arrest and fears going to jail, losing his job, and not being able to support his wife and two children.

At the conclusion of the PSI interview, he shakes hands with you and passes on a \$100 bill. Would you report this attempted bribe and make matters worse for Robert, or would you return the money with a stern lecture and then forget about it?



## Perspective From a Practitioner

**LAURA KIEHL, PRESENTENCE INVESTIGATOR**

**Position:** Presentence investigator

**Location:** Boise, Idaho

**Education:** BA in sociology, minor in English, Boise State University; MA in criminal justice (in progress)

*(Continued)*



(Continued)

**The primary duties and responsibilities of a presentence investigator are:**

The goal of the presentence investigator is to provide the court with a depiction of a criminal defendant once he or she has been found guilty of a felony offense. My goal is not only to document the defendant's version of the crime he or she committed but also to provide the court with an outline of who that person is as an individual. This information comes from a one-on-one interview with the defendant as well as from collateral contacts made with friends, family, employers, educators, and medical professionals. With this information, I prepare a PSI for the sentencing judge that contains information pertaining to the instant offense, criminal history, family and social history, educational background, employment history, and medical and substance abuse history and document the defendant's goals for the future. I also provide the court with a recommendation for sentencing. The recommendation includes my perception of the criminal defendant on the basis of my interactions with him or her as well as my contacts with collateral sources. There are three main options for recommendations: probation, rider (retained jurisdiction, meaning that the offender will spend a short time, typically 90 days, in prison followed by probation), and prison. Within the three recommendations, I add specific treatment and programming guidelines that might benefit the defendant. The recommendations I make are based on the defendant's risk factors and criminal history combined with any additional concerning or protective factors I have determined through the investigative process.

One of the most important traits for someone to have as a presentence investigator is a desire to get to know people. The saying "You catch more flies with honey than with vinegar" goes a long way in this line of work. The defendant has already been convicted, and therefore it is not the job of the presentence investigator to interrogate. I find that my best interviews, which have gained the most information valuable to the court, were interviews in

which I made defendants feel comfortable and feel that they could trust me to tell their stories in a fair and honest manner. An investigative mind is also beneficial, as learning to "dig" for information is part of what makes this job fun and interesting on a day-to-day basis.

**In general, a typical day for a presentence investigator includes:**

My work days vary a great deal. We work a flexible schedule and are required to be in the office only 20 hours per week. One reason for the flexible schedule is our need to be at jails or prisons to conduct interviews with defendants who are in custody awaiting sentencing. We are also able to compose our reports at home or wherever we work best. Some days I will start at the office, go to a jail for an interview, and spend the rest of my day writing at home with my dog sitting beside me. Other days I will be in the office all day for out-of-custody interviews and making collateral contacts. Some days I have writer's block and take the day off, knowing that I will be more productive on a different day. The flexibility has allowed me to be more productive on a day-to-day basis.

**My advice to someone either wishing to study, or now studying, criminal justice to become a practitioner in this career field would be:**

If you want to be a presentence investigator, hone your writing skills. Ultimately, although this job is investigative in nature, the report should be the main focus and needs to be well written and detailed. Reports can take between 10 and 12 hours (or more) to complete. Also, you cannot be afraid to ask questions. I have heard some of the craziest stories from criminal defendants, some of which were extremely uncomfortable to hear. Defendants willing to open up and provide details about their lives need an investigator who is not afraid to keep asking questions. Be ready to be surprised on a daily basis! This job is never boring and is different and challenging every day with every different case.

## Structured Sentencing: Sentencing Guidelines

### LO 4.7 Explain the purpose and use of sentencing guidelines.

We saw in Chapter 1 that a major concern of the Classical School of criminal justice was to make the law more fair and equal by removing a great deal of judicial discretion

and providing standards set by the legislature for making punishment for equal crimes standard. Prior to 1984, federal judges enjoyed nearly unlimited sentencing discretion as long as they stayed within the statutory maximum penalties. This led to a lot of criticism regarding sentencing disparities and moved Congress to establish the **U.S. Sentencing Commission**. This commission was charged with the task of creating mandatory sentencing guidelines to rein in judicial discretion (Reynolds, 2009). **Sentencing guidelines** are forms containing scales with a set of rules for numerically computing sentences that offenders should receive on the basis of the crimes they committed and on their criminal records.

Guidelines are devised by federal or state sentencing commissions and provide classifications of suggested punishments on the basis of an offender's scores on those scales. Because guidelines are a set of rules and principles that are supposed to decide a defendant's sentence, they curtail the discretionary powers of judges, as was intended by Congress. Most people view this as a good thing because unbridled discretion can lead to wide sentencing disparities based only on a judge's subjective evaluations and whims. At one extreme we might get "hanging" judges, and at the other end we might get "bleeding heart" judges, so a defendant's fate may depend largely on the temperament or ideology of the judge by whom they have the good luck or bad fortune to be sentenced.

Guidelines thus provide structured predictability to criminal sanctions by taking Aristotle's definition of justice ("treating equals equally and unequals unequally according to relevant differences") and assigning numbers to these relevant differences. The sample guideline in Figure 4.3 illustrates how numbers are assigned to various aspects of a case that are considered relevant to sentencing. The guidelines used by the federal government and some states limit themselves to crime seriousness and prior record, whereas others are more comprehensive and assign points not only for the statutory degree of seriousness of the offense and prior record but also for the amount of harm done; whether the offender was on bail, probation, or parole at the time; prior periods of incarceration; and a number of other factors. These numbers are then applied to a grid at the point at which they intersect, which contains the appropriate sentence.

Given the usefulness of guidelines, it is unfortunate that not all states use them and that, among the states that do, they vary greatly in quality. In 2008, the National Center for State Courts (NCSC) (2008) evaluated the guidelines in all 21 states that use them and assigned them points on the basis of a number of criteria. The most important of these criteria were whether the guidelines were voluntary or mandatory, whether compelling and substantial reasons were required for departures from guideline sentences, and whether written reasons must be provided for any such departures. The NCSC then ranked each state's guidelines from most voluntary (judges need not follow them) to more mandatory (there is a presumption that judges will abide by them). Figure 4.3 presents the NCSC's evaluation of the guidelines of the 21 states that had them in 2008 on a continuum from most voluntary to most mandatory.

Although guidelines were mandatory in the federal system for many years after their creation, currently they are only advisory. By *mandatory*, we mean that the sentences indicated by the guidelines must be imposed unless there are compelling reasons for not following them. Advisory guidelines are used simply to guide the judges' decisions by providing a uniform set of standards for them to consult if they wish. According to Lubitz and Ross

#### **U.S. Sentencing Commission:**

A commission charged with creating mandatory sentencing guidelines to control judicial discretion.

#### **Sentencing guidelines:**

Scales for numerically computing sentences that offenders should receive on the basis of the crimes they committed and on their criminal records.

**FIGURE 4.3** Continuum of State Sentencing Guidelines

Source: National Center for State Courts (2008).



(2001), sentencing guidelines have achieved a number of outcomes consistent with this classical ideal and with Aristotle’s definition of justice. These outcomes include the following:

- 1. A reduction in sentencing disparity
- 2. More uniform and consistent sentencing
- 3. A more open and understandable sentencing process
- 4. Decreased punishment for certain categories of offenses and offenders and increased punishment for others
- 5. Aid in prioritizing and allocating correctional resources
- 6. Provision of a rational basis for sentencing and increased judicial accountability

Figure 4.4 is a sentencing guideline that takes into consideration many more factors than the seriousness of the offense and prior record and leaves quite a bit of room for subjective judgment, especially in the culpability, mitigation, and credits section. How would you complete this guideline for the Joan Place case outlined in our sample PSI (In Focus 4.1)? What degree of culpability or mitigation would you assign her, and what credits would you give her?

■ **FIGURE 4.4** Example of a Comprehensive Sentencing Guideline

Source: Ohio Bar Association.

**FELONY SENTENCING WORKSHEET:**

**DEFENDANT’S NAME:** \_\_\_\_\_ **CASE NO.:** \_\_\_\_\_

| OFFENSE RATING  | DEFENSE RATING   |
|---|--|
| <p><b>1. Degree of Offense:</b></p> <p>Assess points for the one most serious offense or its equivalent for which offender is being sentenced, as follows: 1st degree felony = 4 points; 2nd degree felony = 3 points; 3rd degree felony = 2 points; 4th degree felony = 1point. _____</p>  | <p><b>1. Prior Convictions:</b></p> <p>Assess 2 points for each verified prior felony conviction, any jurisdiction. Count adjudications of delinquency for felony as convictions. _____</p> <p>Assess 1 point for each verified prior misdemeanor conviction and jurisdiction. Count adjudications of delinquency for misdemeanor as convictions. Do not count traffic or intoxication offenses or disorderly conduct, disturbing the peace, or equivalent offenses. _____</p> |
| <p><b>2. Multiple Offenses:</b></p> <p>Assess 2 points if one or more of the following applies: (A) Offender is being sentenced for two or more offenses committed in different incidents; (B) offender is currently under a misdemeanor or felony sentence imposed by any court; or (C) present offense was committed while offender on probation or parole. _____</p> | <p><b>2. Repeat Offenses:</b></p> <p>Assess 2 points if present offense is offense of violence, sex offense, theft offense, or drug abuse offense, and offender has one or more prior convictions for same type of offenses. _____</p>   |

3. Actual or Potential Harm:

Assess 2 points if one or more of the following applies: (A) Serious physical harm to a person was caused; (B) property damage or loss of \$300.00 or more was caused; (C) there was a high risk of any such harm, damage, or loss, though not caused; (D) the gain or potential gain from theft offense(s) was \$300 or more; or (E) dangerous ordinance or a deadly weapon was actually used in the incident, or its use was attempted or threatened.

4. Culpability:

Assess 2 points if one or more of the following applies: (A) Offender was engaging in continuing criminal activity as a source of income or livelihood; (B) offense was part of a continuing conspiracy to which offender was a party; or (C) offense included shocking and deliberate cruelty in which offender participated or acquiesced.

5. Mitigation:

Deduct 1 point for each of the following, as applicable: (A) There was substantial provocation, justification, or excuse for offense; (B) victim induced or facilitated offense; (C) offense was committed in the heat of anger; and (D) the property damaged, lost, or stolen was restored or recovered without significant cost to the victim.

NET TOTAL = OFFENSE RATING

3. Prison Commitments:

Assess 2 points if offender was committed on one or more occasions to a penitentiary, reformatory, or equivalent institution in any jurisdiction. Count commitments to state youth commission or similar commitments in other jurisdictions.

4. Parole and Similar Violations:

Assess 2 points if one or more of the following applies: (A) Offender has previously had probation or parole for misdemeanor or felony revoked; (B) present offense committed while offender on probation or parole; (C) present offense committed while offender free on bail; or (D) present offense committed while offender in custody.

5. Credits:

Deduct 1 point for each of the following as applicable: (A) Offender has voluntarily made bona fide, realistic arrangements for at least partial restitution; (B) offender was age 25 or older at time of first felony conviction; (C) offender has been substantially law abiding for at least 3 years; and (D) offender lives with his or her spouse or minor children or both and is either a breadwinner for the family or, if there are minor children, a housewife.

NET TOTAL = OFFENDER RATING

Indicated Sentence:

Circle the box on the chart where the offense and the offender ratings determined on the previous page intersect. This indicates a normal sentencing package. If the indicated sentence appears too severe or too lenient for the particular case, do not hesitate to vary from the indicated sentence. In that event, however, list the reasons for the variance in the space provided on the next page.

(Continued)

■ FIGURE 4.4 (Continued)

|                |           | OFFENDER RATING   |   |   |   |   |
|----------------|-----------|---|---|---|---|---|
|                |           | 0-2   | 3-5   | 6-8   | 9-11  | 12 OR MORE  |
| OFFENSE RATING | 6 OR MORE | Impose one of three lowest minimum terms<br><br><b>No probation</b>   | Impose one of three highest minimum terms<br><br><b>No probation</b>  | Impose one of three highest minimum terms<br><br><b>No probation</b>  | Impose one of two highest minimum terms. Make at least part of multiple sentences consecutive.<br><br><b>No probation</b> | Impose highest minimum term. Make at least part of multiple sentences consecutive.<br><br><b>No probation</b>             |
|                | 5         | Impose one of three lowest minimum terms<br><br>Some form of probation indicated only with special mitigation | Impose one of three lowest minimum terms<br><br><b>No probation</b>   | Impose one of three highest minimum terms<br><br><b>No probation</b>  | Impose one of three highest minimum terms<br><br><b>No probation</b>  | Impose one of two highest minimum terms. Make at least part of multiple sentences consecutive.<br><br><b>No probation</b> |
|                | 4         | Impose one of two lowest minimum terms<br><br>Some form of probation indicated                                | Impose one of three lowest minimum terms<br><br>Some form of probation indicated only with special mitigation | Impose one of three lowest minimum terms<br><br><b>No probation</b>   | Impose one of three highest minimum terms<br><br><b>No probation</b>  | Impose one of three highest minimum terms<br><br><b>No probation</b>  |
|                | 3         | Impose one of two lowest minimum terms<br><br>Some form of probation indicated                                | Impose one of two lowest minimum terms<br><br>Some form of probation indicated                                | Impose one of three lowest minimum terms<br><br>Some form of probation indicated only with special mitigation | Impose one of three lowest minimum terms<br><br><b>No probation</b>   | Impose one of three highest minimum terms<br><br><b>No probation</b>  |
|                | 0 - 2     | Impose lowest minimum term<br><br>Some form of probation indicated  | Impose one of two lowest minimum terms<br><br>Some form of probation indicated                                | Impose one of two lowest minimum terms<br><br>Some form of probation indicated                                | Impose one of three lowest minimum terms<br><br>Some form of probation indicated only with special mitigation             | Impose one of three lowest minimum terms<br><br><b>No probation</b>   |





## In Focus 4.2

### POLICY STATEMENT OF THE AMERICAN CORRECTIONAL ASSOCIATION REGARDING SENTENCING

Because of changing sentencing policies (determinate, mandatory minimums, and particularly the policies driven by the “war on drugs”), there has been a huge increase in the prison population in the United States. According to the American Correctional Association (ACA), sentencing policies should be aimed at controlling crime at the lowest cost to taxpayers, and offenders should be placed in the least restrictive environment consistent with public safety. The ACA strongly promotes and supports any policies that render sentencing fair and rational and has issued its 2009 official statement on sentencing policy, reproduced below.

The American Correctional Association actively promotes the development of sentencing policies that should

- A. Be based on the principle of proportionality. The sentence imposed should be commensurate with the seriousness of the crime and the harm done;
- B. Be impartial with regard to race, ethnicity and economic status as to the discretion exercised in sentencing;
- C. Include a broad range of options for custody, supervision and rehabilitation of offenders;
- D. Be purpose-driven. Policies must be based on clearly articulated purposes. They should be grounded in knowledge of the relative effectiveness of the various sanctions imposed in attempts to achieve these purposes;
- E. Encourage the evaluation of sentencing policy on an ongoing basis. The various sanctions should be monitored to determine their relative effectiveness based on the purpose(s) they are intended to have. Likewise, monitoring should take place to ensure that the sanctions are not applied based on race, ethnicity or economic status;
- F. Recognize that the criminal sentence must be based on multiple criteria, including
  - the harm done to the victim, past criminal history, the need to protect the public and the opportunity to provide programs for offenders as a means of reducing the risk for future crime;
- G. Provide the framework to guide and control discretion according to established criteria and within appropriate limits and allow for recognition of individual needs;
- H. Have as a major purpose restorative justice — righting the harm done to the victim and the community. The restorative focus should be both process and substantively oriented. The victim or his or her representative should be included in the “justice” process. The sentencing procedure should address the needs of the victim, including his or her need to be heard and, as much as possible, to be and feel restored to whole again;
- I. Promote the use of community-based programs whenever consistent with public safety; and
- J. Be linked to the resources needed to implement the policy. The consequential cost of various sanctions should be assessed. Sentencing policy should not be enacted without the benefit of a fiscal-impact analysis. Resource allocations should be linked to sentencing policy so as to ensure adequate funding of all sanctions, including total confinement and the broad range of intermediate sanction and community-based programs needed to implement those policies

This Public Correctional Policy was unanimously ratified by the American Correctional Association Delegate Assembly at the Congress of Correction in St. Louis, Aug. 10, 1994. It was last reviewed and affirmed at the 2014 Winter Conference in Tampa, FL, February 4, 2014.

*Source:* Reprinted with permission of the American Correctional Association (Alexandria, VA).

## The Future of Sentencing Guidelines

### LO 4.8 State factors that may affect the future implementation and use of sentencing guidelines.

As useful as guidelines have proved to be for reducing sentencing disparity and curtailing judicial discretion, their future format and function are by no means ensured. As mentioned above, the federal guidelines are now only “advisory,” meaning that judges can consult them and follow them or not, which has opened the door once again to unwarranted sentencing discrepancies that guidelines were supposed to rein in. The turnabout began with the recognition of the separation of responsibilities of the trial judge and the trial jury. The role of judges is to be finders of law; the role of juries is to be finders of facts. A famous case based on that principle came before the U.S. Supreme Court in 2005 (*United States v. Booker*, 2005).

The circumstances of the case are that Freddie Booker was arrested in 2003 in possession of 92.5 grams of crack cocaine. He also admitted to police he had sold an additional 566 grams. A jury found Booker guilty of possession with intent to sell at least 50 grams, for which the possible penalty ranged from 10 years to life. At sentencing, the judge used additional information (the additional 566 grams and the fact that Booker had obstructed justice) to sentence Booker to 30 years. Booker’s sentence would have been 21 years and 10 months on the basis of the facts presented to the jury and proved beyond a reasonable doubt.

Booker appealed his sentence, arguing that his Sixth Amendment rights had been violated by the judge “finding facts” when that is the proper role of the jury. An earlier federal appeals court had ruled the facts of prior convictions are the only facts judges can “find” as justification for increasing sentencing. In other words, anything other than prior record that is used to increase a criminal penalty beyond what the guidelines call for must be submitted to a jury and proved beyond a reasonable doubt. The Supreme Court agreed with Booker that his sentence violated the Sixth Amendment and sent the case back to district court with instructions either to sentence Booker within the sentencing range supported by the jury’s findings or to hold a sentencing hearing before a jury (Bissonnette, 2006).

The remedial portion of the Supreme Court’s opinion (what can be done to prevent this from happening again?) is much more controversial. The Court held that the guidelines were to be advisory only and therefore no longer binding on judges. However, the Court did require judges to “consult” the guidelines and take them into consideration, but there is no way of ensuring that judges comply. John Ashcroft, the U.S. attorney general at the time, called the decision “a retreat from justice,” and Congressman Tom Feeney decried that “the extraordinary power to sentence” was now afforded to federal judges who are accountable to no one and that the decision “flies in the face of the clear will of Congress” (Bissonnette, 2006, p. 1499). In fact, Booker was resentenced by the same judge to the same 30-year sentence he originally received. Because the sentencing guidelines had then become merely advisory, the judge did not need to further justify his sentence, because it was within the range of the statutorily defined penalty. The Court’s ruling on guidelines currently applies only to the federal system.



## Comparative Corrections

### SENTENCING IN COMPARISON COUNTRIES

Sentencing in our four major comparison countries differs radically. The most brutal sentences are handed out in Saudi Arabia. Sentences are fixed and unalterable for crimes called *hudud* crimes because they are considered crimes against God as outlined in the Koran. These crimes (and their penalties) are adultery (death), fornication (whipping—80 lashes), false accusation of any of the foregoing crimes (whipping—100 lashes), alcohol consumption (whipping—varies; death is possible after a third offense), apostasy—conversion from Islam to some other faith (death), theft (amputation of hand), and robbery (amputation of alternate-side hand and foot). Saudi criminal courts are religious courts, and judges have practically free rein in sentencing in non-hudud crimes and do not follow any uniform legalistic guidelines.

For crimes known as *qisas* crimes, the penalties are imposed in a literal “eye for an eye, and a tooth for a tooth” fashion but can be forgiven on the payment of “blood money” to the victim or the victim’s survivors. For instance, a 14-year-old was sentenced to be surgically paralyzed because he had stabbed and paralyzed a companion in a fight. However, the boy’s mother was able to raise enough blood money to spare him that fate (Knowles, 2013). The least serious crimes under Islamic law are called *ta’zir* (rehabilitation) crimes, which include consumption of pork, bribery, provocative dress, wifely disobedience, and traffic offenses. Penalties for these offenses are entirely discretionary and may include a dressing down by the judge, a short prison sentence, or some form of light corporal punishment, but sometimes a death sentence can be imposed (Walsh & Hemmens, 2014).

China is definitely tough on crime, albeit more lenient than Saudi Arabia. Chinese sentences are classified as community control, criminal detention, fixed-term imprisonment, life imprisonment, and the death penalty. Community control is imposed for minor offenses and is analogous to probation. Offenders under control continue to work but

are continually under surveillance by the police and under the informal control of neighborhood committees.

Criminal detention is analogous to a jail sentence in the United States where offenders are sent to jail for a short time for committing relatively minor crimes. Offenders may be granted permission to go home 1 or 2 days each month and may be paid for work, which makes the sentence like a work release sentence in the United States. Fixed-term imprisonment ranges from 6 months to 15 years, and the step after that is life imprisonment. Individuals sentenced to fixed-term or life imprisonment are subjected to long periods of hard labor as long as they are physically able. The most serious sentence is one of death; we will discuss this in a later chapter.

In 2008, the Chinese courts introduced sentencing guidelines with the intention of introducing uniformity in sentencing. These guidelines contain the same criteria for determining sentences as do American guidelines and are mandatory (judges must follow them). Curiously, for the harshest of sentences—life imprisonment and death—judges retain full sentencing discretion (Chen, 2010).

Before its exit from the European Union (EU), the United Kingdom was bound by the EU Charter of Fundamental Rights, which demands “proportionality” in criminal sentencing (Albers et al., 2013). However, national governments retain a margin of discretion in such matters, and the United Kingdom now has full control over its own penal policies. There are four types of sentences in England and Wales: discharge, fines, probation, and prison. Sentences depend on whether the offenses were indictable or summary offenses, which are analogous to the felony/misdemeanor distinction in the United States. A convicted person may be discharged conditionally or absolutely for minor offenses if the court decides not to impose any punishment. Fines are the most common sentence imposed in magistrates’ courts (analogous to

(Continued)

(Continued)

municipal courts that deal with misdemeanors in the United States). Prison sentences for serious offenses are of fixed terms from 1 year to life and are passed down by the Crown Courts (analogous to U.S. district courts). There is no death penalty in the United Kingdom. The courts in England and Wales use a grid-based guideline much like those in fashion in the United States, and Parliament has mandated that the “courts ‘must follow’ definitive guidelines rather than merely ‘have regard to’ them” (Roberts, 2011, p. 997). PSIs are also written for cases in which probation or prison is being considered.

According to the official French government website (Service Public Française, 2013), offenses in France are divided into *crimes*, *délits*, and *contraventions*. *Crimes* are the most serious offenses. They are tried in assize court with judges and juries and are punishable by 15 to 30 years in prison or, in exceptional cases, by life in prison. Examples of *crimes* are murder and rape. A *délit* is an offense punishable by imprisonment from 2 months to 10 years and is tried in a correctional court. Although

*délits* are classified as “second-tier” crimes, they are very serious offenses, such as robbery, aggravated assault, and sexual assault. *Délits* can become crimes with aggravating circumstances. *Contraventions* are minor offenses tried in police courts and punishable only by fines up to 3,000 euros (about \$4,000). There is no death penalty in France.

Because the termination of a French trial results simultaneously in a verdict and a sentence, a PSI is not necessary. All the information typically included in a PSI is already known to the sentencing panel (typically, three professional judges and nine laypersons) because the investigatory process in France is more thorough than in the Anglo-American common law tradition; thus, the character of the defendant and all the relevant personal information regarding his or her background is well known (Walsh & Hemmens, 2014). Nor are there sentencing guidelines other than statutory penalties, leaving judges with excessive discretion that can lead to serious inequalities in sentencing (Padfield, 2011).

## SUMMARY

**LO 4.1** Explain how modern sentencing engages Aristotle’s notion of justice.

- Sentencing is a postconviction process in which the courts implement one or more of the punitive philosophies: retribution, deterrence, incapacitation, or rehabilitation. Sentencing decisions should be in accordance with justice.

**LO 4.2** Describe the different types of sentencing and their rationales.

- There are three major sentencing models: indeterminate (a range of possible years), determinate (a specific number of years), and mandatory (can exist under either of the above models but means that the person must be sent to prison; probation is not an option).
- Truth-in-sentencing laws have led to longer sentences, a stronger move to determinate and mandatory sentencing, and statutes such as habitual offender statutes.

**LO 4.3** Identify other sentencing options and how they are applied.

- Judges have additional options for sentencing dependent upon the offender and circumstances related to the crime. Shock probation is a type of sentence used to literally shock offenders into going straight by exposing them to the reality of prison life for a short period, typically no more than 30 days, followed by probation. Split sentences require felons to serve brief periods of confinement in a county jail prior to probation placement.

**LO 4.4** Explain the role of problem-solving courts.

- Problem-solving courts are alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as drug, alcohol, domestic violence, and mental health problems.
- Sentencing to a drug court is becoming increasingly popular in the United States.

**LO 4.5** Assess the issues surrounding sentencing disparity.

- Sentencing disparity—sentences not accounted for by legally relevant variables—is a major concern in the criminal justice system. A big concern is whether African Americans' more severe sentences are accounted for by their greater involvement in crime or by racism. The sentences imposed for crack versus powder cocaine possession have been a contentious issue because of racial differentials in the possession and sale of crack versus cocaine.

**LO 4.6** Identify the purpose of presentence reports and sentencing guidelines as well as the contentious issues surrounding them.

- Efforts have been made to “individualize” justice by providing judges with presentence investigation reports, written by probation officers, that contain many factors about the people the judges are to sentence. A big controversy involving these reports is whether the defense should be able to view them.

**LO 4.7** Explain the purpose and use of sentencing guidelines.

- Sentencing guidelines are designed to eliminate sentencing disparity by submitting a person's crime seriousness and prior record (in some states additional information is included) to a scoring system. The person is then supposed to be sentenced the same way as every other person who receives the same score.

**LO 4.8** State factors that may affect the future implementation and use of sentencing guidelines.

- Certain legal problems with sentencing under guidelines moved the Supreme Court to rule that the federal guidelines, which were previously mandatory, were now to be merely advisory. This opened up the door once again for wide levels of judicial discretion and thus for sentencing disparity.

## KEY TERMS

Concurrent sentence 82  
 Consecutive sentence 82  
 Determinate sentence 82  
 Drug court 86  
 Fair Sentencing Act of 2010 91  
 First Step Act 91  
 Habitual offender statutes 83

Indeterminate sentence 81  
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Sentencing disparity 89  
 Sentencing guidelines 97  
 Shock probation 84  
 Split sentences 84  
 Truth-in-sentencing laws 82  
 U.S. Sentencing Commission 97  
 Victim impact statement 84

## DISCUSSION QUESTIONS

1. Is it ever just, right, and moral to sentence equals in terms of legally relevant variables unequally? Give an example.
2. If you are being sentenced for a felony, would you prefer to know when your date for parole consideration is to come, or would you prefer an indeterminate sentence so that you could possibly “work your way out” and be released earlier?
3. What is your opinion of habitual offender statutes that lock people up for life if convicted of a third felony?
4. What research strategy is required to assess the racial sentencing disparity issue?
5. What are the pros and cons of allowing the defense access to the presentence investigation report? Where do you stand on the issue?
6. Sentencing guidelines were designed to rein in excessive judicial sentencing discretion, and most criminal justice personnel consider this a very good thing. Why did the Supreme Court throw a wrench into the works by making the federal guidelines advisory only?





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# 5

## Jails and Detention Centers

### TEST YOUR KNOWLEDGE

Test your current knowledge of jails by answering the following questions as true or false. Check your answers on page 386 after reading the chapter.

1. Most jails are operated by states.
2. Jails for juveniles are usually referred to as detention centers.
3. Most inmates of adult jails have been convicted of crimes.
4. The drug war has disproportionately affected the number of people of color and women incarcerated in jails.
5. Jails have become the most likely social institutions to hold people with mental illnesses in the United States.
6. Incarcerated women tend to have fewer medical problems than incarcerated men.
7. Female staff in jails are more likely to be the perpetrators of sexual victimization of male inmates than are male staff.

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 5.1 Identify the origins of jails and types of jails in operation.
- 5.2 Explain how jails process individuals.
- 5.3 Assess how jails affect and are affected by overcrowding, race, gender, age, and special needs of their inmates.
- 5.4 Describe the various approaches jails take to address medical problems of inmates.
- 5.5 Discuss how jails manage sexual violence, gangs, and suicides.
- 5.6 Explain the kinds of innovations happening in jails and how they are working out.

### AN INMATE WITH A MENTAL ILLNESS IN THE DOÑA ANA COUNTY JAIL, NEW MEXICO

Stephen Slevin, 59, was an inmate for 22 months in the Doña Ana County Jail in Las Cruces, New Mexico (“\$15.5 Million Settlement,” 2014, p. 20). He was first booked into the jail on charges of driving while intoxicated and receiving or transferring a stolen vehicle in August 2005 (a friend had let him borrow the car to drive across the country). He had a history of suicide attempts and mental illness, so the jail officers in booking placed him in an empty padded cell for 2 days before he was assessed by the mental health unit. He was then eventually sent to solitary confinement, where he had no contact with a judge or medical personnel for the next 18 months. It was noted that upon entering the jail, he had been a well-nourished and healthy man with a mental illness. After the 18 months in solitary confinement and a psychiatric evaluation, however, he smelled; had overgrown nails and hair; was malnourished, at 133 pounds; and “complained of paranoia, hallucinations, bed sores and untreated dental problems” (“\$15.5 Million Settlement,” 2014, p. 21). Slevin had pulled out his own infected tooth while incarcerated, as no dental care was provided to him. A month after this evaluation, he was again placed in solitary confinement but was finally released in June 2007 when the charges were dismissed. He sued in federal court, alleging a violation of his civil rights and false imprisonment, and a federal jury agreed and awarded him \$22 million. When Doña Ana County appealed this decision, a federal judge affirmed the punitive and compensatory damages in the original award. To avoid further appeals by the county, however, Slevin settled with them and their insurer for \$15 million dollars in 2013 (“\$15.5 Million Settlement,” 2014, p. 20).



**Jails:** Local community institutions that hold people who are presumed innocent before trial, convicted people before they are sentenced, convicted minor offenders who are sentenced for terms that are usually less than a year, juveniles (usually in their own detention centers, separated from adults in adult jails, or before transport to juvenile facilities), women (usually separated from men and sometimes in their own jails), and people for the state or federal authorities; they serve to incapacitate, deter, rehabilitate, punish, and reintegrate (depending on the particular jail population being served and the capacity of the given facility).

## Introduction: The Community Institution

### LO 5.1 Identify the origins of jails and types of jails in operation.

The American jail is a derivative of various modes of holding people for trial that have existed in Western countries for centuries. Whether fashioned from caves, mines, or old houses or as separate buildings, **jails** were developed originally as a primary means of holding the accused for trial, for execution, or in lieu of a fine. As noted in Chapter 2, jails were called gaols in the England of the Middle Ages and were operated by the *shire reeve*, or sheriff, and his minions.

Jails have been in existence much longer than prisons, and their mission is much more diverse, especially now. These days, jails are usually local and community institutions that hold people who are presumed innocent before trial; they hold convicted offenders before they are sentenced; they hold more minor offenders who are sentenced for terms that are usually less than a year; they hold juveniles (usually in their own detention centers [jails] or separated from adults or before transport to juvenile facilities); they hold women (usually separated from men and sometimes in their own jails); they hold people for the state or federal authorities (there are some exclusively federal jails); and depending on the particular jail population being served and the capacity of any given facility, they serve to incapacitate, deter, rehabilitate, punish, and reintegrate.

Although described as correctional afterthoughts by scholars and despite their multifaceted and critical role in communities, jails have often received short shrift in terms of monetary support and professional regard (Kerle, 1991, 2003, 2011; Thompson & Mays, 1991; Zupan, 1991). The vast majority of jails are operated by county sheriffs, whose primary focus has been law enforcement rather than corrections. As a result, jail facilities have often been neglected, resulting in dilapidated structures, and jail staffs have had less training and pay than probation and parole officers in communities or correctional staffs working at the state or federal level in prisons. Jail staffs also often receive less pay and training than deputy sheriffs working in the same organization (sheriff's office) as the jail. Research indicates that many in the general public may even view jails as more punitive than prisons (see, e.g., May, Applegate, Ruddell, & Wood, 2014). The late comic Rodney Dangerfield's perennial lament "[They] don't get no respect" surely applies to jails more than perhaps any other social institution.

In this chapter, we discuss how this forgotten social institution fulfills a vital community role—one that includes all of the functions described in the preceding paragraph as well as serving as a repository for people who are only nominally criminal and have nowhere else to go (e.g., people experiencing homelessness or people with mental illnesses). The role of jails also includes the holding of some state or federal inmates, as prisons are too full. In some larger counties, the holding of longer-term sentenced inmates or those who have numerous physical, mental, and substance abuse problems—not to mention educational deficits—has led to more programming and treatment in jails. Part and parcel of this interest in treatment is the emergence of community reentry programs, as will also be discussed in the chapter on parole (see Chapter 9), as a means of preventing crime and addressing the multifaceted needs of former jail inmates. In this chapter, these emerging trends will be explored, as will the challenges jails face, but first, we will discuss the types of institutions that constitute jails.

### Jail Types

The typical jail is operated by the sheriff of a county. However, some cities, states, and the federal government operate jails, and sometimes, multiple jurisdictions combine resources to administer a jail that serves a region. Some counties have hired jail administrators to oversee the operation of the jail, taking it out of the hands of the local sheriff. Jails for adults are

sometimes called detention centers, and jails for juveniles are almost always referred to as detention centers. Some Native American tribes have their own jails, and many police departments have short-term lockup facilities to hold suspects or those accused of crimes. Currently, there are about 2,850 jails in the United States, and 79 jails are operated by Native American tribes (Minton, 2014, 2015; Minton & Golinelli, 2014; Zeng, 2020, p. 10). When a state or the federal government (or another governmental entity) has inmates for a jail but no facility of its own in a given vicinity, the entity will typically ask the county to hold that inmate. Counties are usually more than willing to do this, as they are paid a fee that often exceeds the cost of holding inmates, which makes holding inmates for other jurisdictions a money-making enterprise.



**Photo 5.1** Travis County Jail.

© Wikimedia/WhisperToMe

Most jails are composed of one or two buildings in close proximity to each other. They are usually operated somewhat close to a city or town center, except when located on reservations or at military facilities. Larger jail jurisdictions (more than 1,000 inmates) will often operate more than one jail. Some states, usually smaller ones, have combined jail or prison systems (i.e., Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont; Zeng, 2020, p. 10).

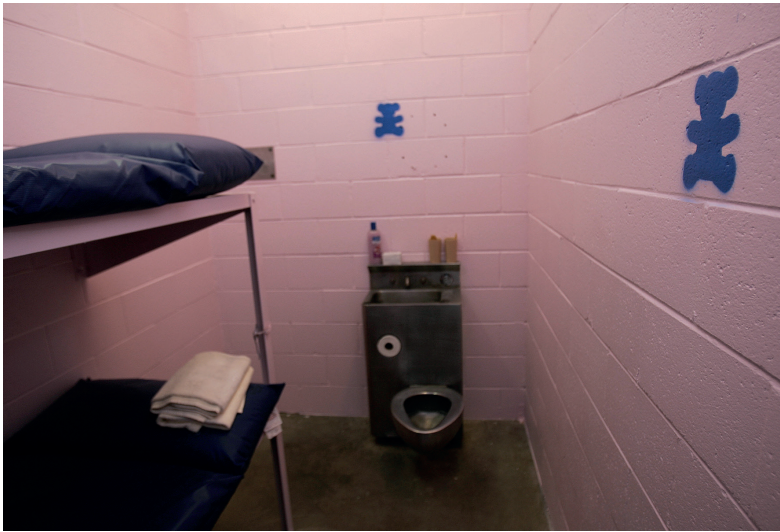
Many jails have adopted technological changes that have greatly enhanced their ability to supervise and control inmates. The use of cameras, voice-operated and visual-check-operated doors by a control center, electronic fingerprint machines, and even video arraignments and visiting are revolutionizing the jail experience. Certainly, these changes are making facilities more secure, but also, in the case of video visiting, they may make it easier to maintain contact with the outside.

## Jail Inmates and Their Processing

### LO 5.2 Explain how jails process individuals.

Jails operate 7 days a week, 24 hours a day, as crime does not take a holiday. They hold all kinds of inmates, from the serious convicted offender awaiting transport to a state or federal prisoner, down to the accused misdemeanor who cannot make bail. About 66% of jail inmates have not been convicted of crimes for which they are being held; they are awaiting court action (Zeng, 2020, p. 1). Jails receive inmates from local, state, federal, and tribal police officers. In 2018, they processed 10.7 million inmates (down from a peak of 13.6 million in 2008), with most inmates in and out within a few days or a week, some within hours, though others might be held for more than a year, particularly if they are sentenced state or federal inmates (Minton, 2010; Minton & Golinelli, 2014, p. 4; Zeng, 2020, p. 1). In 2018, the average length of stay for inmates of jails was 25 days, but this varied widely from 11.2 days for small jails (49 or fewer inmates) to 34.2 days for the largest jails (2,500 or more inmates; Zeng, 2018, p. 6; 2020, p. 1). The average likely differs so much because the larger jails are more likely to be holding state and federal inmates for trial or for part of their sentences to jail or prison. Those sentenced are more likely to spend longer periods of time in the jails.

Getty Images/AFP PHOTO/Jeff Haynes



**Photo 5.2** A double-bunk jail cell. The pink interior paint is meant to soothe detainees.

Because of their complicated and diverse role and as a means of keeping track of the inmates they are responsible for holding, jails will often follow a set procedure that is prescribed by tradition, law, and practice. The first part of the typical processing of an inmate at a county or city jail is the delivery of the arrestee to the facility by a law enforcement officer. Many arrestees may be stressed, upset, mentally disturbed, or intoxicated. In the latter case, the officer may choose to administer a Breathalyzer test at the jail. If the arrestee is injured, or in need of a blood test to determine drug intoxication, or obviously ill (especially in the era of COVID-19), the jail's booking staff may require that the arrestee be taken by law enforcement to the hospital to be checked out or tested before they are admitted to the jail.

If the arrestee is not injured, the law enforcement officer will fill out the paperwork for admittance of the arrestee to the facility. Usually, the arrestee is still with the officer when this is occurring and often still in handcuffs. Once the required paperwork and processing are completed, the jail will accept the arrestee, search them, and begin its own paperwork for admitting the arrestee. At this juncture and depending on the alleged offense, the arrestee may be allowed to contact family and friends or a bail bondsman. The arrestee might be released directly into the community if the alleged offense is minor (termed released on recognizance or ROR). However, if the alleged offense is serious enough, the arrestee will need to await arraignment by a judge to determine bail and, in the interim, might be booked into the jail.

During the booking process, jails will often strip-search—though not always—arrestees (now inmates), take their property, and issue clothing and other essentials. If the new inmate is intoxicated or belligerent, booking staff may place them in a special holding cell. In the latter case, this might involve a padded room or a restraint chair. Once the inmate is sober and calm, they are then classified and moved to a more permanent housing area in the jail. Larger jails often keep new inmates in a separate area or cell before they place them in a general housing unit so they can be observed and classified (on the basis of the inmate's alleged offense, alleged criminal coconspirators, criminal history, gang involvements, health, treatment and other needs, etc.). In response to the COVID-19 pandemic, some jails (with local judicial approval) have increased their ROR orders, relaxed bail requirements, or quarantined all new inmates for a period of 14 days in designated living units (Sokol, 2020).

## Trends in Jail Populations

**LO 5.3** Assess how jails affect and are affected by overcrowding, race, gender, age, and special needs of their inmates.

Today jails must address the challenges of overcrowding, race, gender, age, and special needs of inmates within their populations. Here we will discuss the impacts of these trends.

### Overcrowding

As indicated in other sections of this book, jails have to deal with the same kinds of overcrowding issues that have afflicted prisons. **Overcrowding** occurs when the number of

**Overcrowding:** A phenomenon that occurs when the number of inmates exceeds the physical capacity (the beds and space) available.



inmates exceeds the physical capacity (i.e., the beds and space) available. Over the past several decades, the number of jail beds needed by jurisdictions has increased, and they were often filled almost as soon as they were built (see Table 5.1; Zeng, 2020). However, since 2008 there has been an unprecedented decrease in the number of jail inmates. As of 2018 (the latest data available at the time of this writing), on average, jails were operating at 81% of their capacity, and the highest capacity for the past decade was achieved in 2006 and 2007, when jails were operating at 96% (Zeng, 2020, p. 1). Clearly, 81% of capacity is better than 96% of capacity and better than in past years, when jails of the 1980s and 1990s were operating at well over their rated capacity (Cox & Osterhoff, 1991; Gilliard & Beck, 1997; Klofas, 1991). Also, and notably, even an average of 81% for 2018 means that half of the jails in the United States were operating at over that average.

Moreover, the percentages of capacity can be misleading when one considers overcrowding. Certain sections of jails are designated for specific types of inmates that cannot or do not mix well (e.g., men and women but also juveniles, arrestees, inmates with medical problems, gang members or, in 2020, quarantined new inmates to prevent the spread of coronavirus). The percentage capacity may indicate that the jail is not completely full, but any given section might be overwhelmed with such inmates.

**TABLE 5.1** Jail Capacity, Midyear Population, and Percentage of Capacity Occupied in Local Jails, 2005–2018

| YEAR  | JAIL CAPACITY <sup>a</sup> | MIDYEAR POPULATION <sup>b</sup> | PERCENT OF CAPACITY OCCUPIED <sup>c</sup> |
|-------|----------------------------|---------------------------------|---|
| 2005  | 787,000 <sup>†</sup>       | 747,500                         | 95.0% <sup>†</sup>                        |
| 2006  | 795,000 <sup>†</sup>       | 765,800 <sup>†</sup>            | 96.3 <sup>†</sup>                         |
| 2007  | 810,500 <sup>†</sup>       | 780,200 <sup>†</sup>            | 96.3 <sup>†</sup>                         |
| 2008  | 828,700 <sup>†</sup>       | 785,500 <sup>†</sup>            | 94.8 <sup>†</sup>                         |
| 2009  | 894,900 <sup>†</sup>       | 767,400 <sup>†</sup>            | 90.3 <sup>†</sup>                         |
| 2010  | 857,900 <sup>†</sup>       | 748,700                         | 87.3 <sup>†</sup>                         |
| 2011  | 870,900 <sup>†</sup>       | 735,600                         | 84.5 <sup>†</sup>                         |
| 2012  | 877,400 <sup>†</sup>       | 744,500                         | 84.9 <sup>†</sup>                         |
| 2013  | 872,900 <sup>†</sup>       | 731,200                         | 83.8 <sup>†</sup>                         |
| 2014  | 890,500                    | 744,600                         | 83.6 <sup>†</sup>                         |
| 2015  | 901,400                    | 727,400                         | 80.7                                      |
| 2016  | 915,400                    | 740,700                         | 80.9                                      |
| 2017  | 915,100                    | 745,200                         | 81.4                                      |
| 2018* | 907,000                    | 738,400                         | 81.4                                      |

Note: Data are rounded to the nearest 100 for jail capacity and midyear population.

\*Comparison year.

<sup>†</sup>Difference with comparison year is significant at the 95% confidence level.

<sup>a</sup>Maximum number of beds or inmates assigned by rating official to a facility, excluding separate temporary holding areas.

<sup>b</sup>The number of inmates held on the last weekday in June.

<sup>c</sup>The midyear inmate population divided by the rated capacity.

Source: Zeng (2020).



**Photo 5.3** Inmates in the reception housing area of a California state prison. California, like many states, has suffered from severe overcrowding in recent decades.

Such overcrowding limits the ability of the jail to fulfill its multifaceted mission: Less programming can be provided, health and maintenance systems are overtaxed, and staff are stressed by the increased demands on their time and the inability to meet all inmate needs. From the inmates' perspective, their health, security, and privacy are more likely to be threatened when the numbers of inmates in their living units increase, and the amount of space—and possibly, the number of staff—does not. The jail staff also lose their ability to effectively classify and sometimes control inmates; they may be unable to keep the offenders convicted of serious crimes away from the presumed-innocent unconvicted or more minor-offending inmates. Judges and jail managers will struggle over how to

keep the jail population down to acceptable limits, and as a result, even serious offenders may be let loose into communities as a means of reducing the crowding. Therefore, though the get-tough laws in many states were passed with the explicit intent of incarcerating more people for longer, their actual unintended effect in some jails may be to incarcerate serious offenders less (as there is no room) and all offenders in less safe and less secure facilities.

Although suits by jail inmates are usually not successful, some are. Welsh (1995) found, in his study of lawsuits involving California jails, that the issue courts gave greatest credence to was overcrowding. Perhaps this is because overcrowding is clearly quantifiable (the rated capacity is clear, and the inmate count is obvious), but it is likely that it was regarded as so important by courts because it can lead to a number of other seemingly intractable problems, such as those just mentioned.

### Race, Ethnicity, Gender, and Juveniles

As indicated from the data supplied in Table 5.2, most jail inmates are adult racial-ethnic minority (African American, Latinx, and other minority group) men, though the number of white people represents the largest racial grouping of the men, and the number of white people as a proportion of the total men has increased markedly, particularly since 2010. The number of African American and Latinx inmates decreased over the decade from 2008 to 2018, by 21.3% and 14.9%, respectively, with an increase of 10.6% of white inmates over the same period (Zeng, 2020, p. 5). Despite these relatively recent decreases in incarceration in jails for African Americans, they still were incarcerated at a rate 3.2 times that of white people (down from 5.6 times in 2000), while Latinx inmates, who as of 2005 had a 1.6 times higher incarceration rate than white people, had a lower one than whites (182 vs. 187 per 100,000) by 2018 (Zeng, 2018, p. 3; Zeng, 2020, p. 4).

The number of female jail inmates increased in the decade from 2008 to 2018 by 15.4%, while the number of men decreased by 9.1% in that same time period (Zeng, 2020, p. 5). Women constituted more than 12.2% of jail inmates in 2009, but that increased to almost 19% by 2018 (Minton & Zeng, 2015, p. 4; Zeng, 2020, p. 5). The reason often cited for the overall increases in incarceration in jails and prisons and the increases for women and people of color in jails and prisons, in particular, has been the prosecution of the drug war since the 1980s and 1990s. The get-tough policies, which have led to longer periods of

**TABLE 5.2** Number of Confined Inmates in Local Jails, by Characteristics, 2005, 2008, 2010, 2015, 2018, and 2015–2018

| CHARACTERISTIC                             | 2005                 | 2008                 | 2010                 | 2015 <sup>a</sup>    | 2016 <sup>a</sup>    | 2017                 | 2018 *  | CHANGE FROM 2008 TO 2018 |         |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|---------|--------------------------|---------|
|  |                      |                      |                      |                      |                      |                      |         | COUNT                    | PERCENT |
| Total                                      | 747,500              | 785,500 <sup>†</sup> | 748,700              | 727,400              | 740,700              | 745,200              | 738,400 | -47,100                  | -6.0%   |
| <b>Sex</b>                                 |                      |                      |                      |                      |                      |                      |         |                          |         |
| Male                                       | 653,000 <sup>†</sup> | 685,900 <sup>†</sup> | 656,400 <sup>†</sup> | 623,600              | 633,100              | 631,500              | 623,400 | -62,500                  | -9.1%   |
| Female                                     | 94,600 <sup>†</sup>  | 99,700 <sup>†</sup>  | 92,400 <sup>†</sup>  | 103,800 <sup>†</sup> | 107,600 <sup>†</sup> | 113,700              | 115,100 | 15,400                   | 15.4    |
| <b>Adults</b>                              |                      |                      |                      |                      |                      |                      |         |                          |         |
| Male                                       | 740,800              | 777,800 <sup>†</sup> | 741,200              | 723,800              | 736,800              | 741,600              | 735,000 | -42,800                  | -5.5%   |
| Female                                     | 646,800 <sup>†</sup> | 678,700 <sup>†</sup> | 649,300 <sup>†</sup> | 620,300              | 629,700              | 628,200              | 620,500 | -58,200                  | -8.6    |
| Juveniles <sup>b</sup>                     | 94,000 <sup>†</sup>  | 99,200 <sup>†</sup>  | 91,900 <sup>†</sup>  | 103,500 <sup>†</sup> | 107,100 <sup>†</sup> | 113,400              | 114,500 | 15,300                   | 15.4    |
| Held as adult <sup>c</sup>                 | 6,800 <sup>†</sup>   | 7,700 <sup>†</sup>   | 7,600 <sup>†</sup>   | 3,600                | 3,900                | 3,600                | 3,400   | -4,300                   | -55.8%  |
| Held as juvenile                           | 5,800 <sup>†</sup>   | 6,400 <sup>†</sup>   | 5,600 <sup>†</sup>   | 3,200 <sup>†</sup>   | 3,200 <sup>†</sup>   | 3,200 <sup>†</sup>   | 2,700   | -3,700                   | -57.8   |
|  | 1,000                | 1,300 <sup>†</sup>   | 1,900 <sup>†</sup>   | 400                  | 700                  | 300 <sup>†</sup>     | 700     | -600                     | -46.2   |
| <b>Race/ethnicity</b>                      |                      |                      |                      |                      |                      |                      |         |                          |         |
| White <sup>d</sup>                         | 331,000 <sup>†</sup> | 333,300 <sup>†</sup> | 331,600 <sup>†</sup> | 351,600 <sup>†</sup> | 356,100              | 370,100              | 368,500 | 35,200                   | 10.6%   |
| Black <sup>d</sup>                         | 290,500 <sup>†</sup> | 308,000 <sup>†</sup> | 283,200 <sup>†</sup> | 255,200 <sup>†</sup> | 254,600 <sup>†</sup> | 250,100              | 242,300 | -65,700                  | -21.3   |
| Hispanic                                   | 111,900              | 128,500 <sup>†</sup> | 118,100 <sup>†</sup> | 103,900              | 112,700              | 108,400              | 109,300 | -49,200                  | -4.9    |
| American Indian/Alaska Native <sup>d</sup> | 7,600 <sup>†</sup>   | 9,000                | 9,900                | 9,000                | 9,000                | 8,800                | 9,700   | 700                      | 7.8     |
| Asian <sup>d</sup>                         | 4,900                | 5,000                | 4,400 <sup>†</sup>   | 5,200                | 5,200 <sup>†</sup>   | 4,800                | 4,800   | -200                     | -4.0    |
| Other <sup>d,e</sup>                       | 1,500 <sup>†</sup>   | 1,800 <sup>†</sup>   | 1,500 <sup>†</sup>   | 2,500                | 2,900                | 2,900                | 3,900   | 2,100                    | 116.7   |
| <b>Conviction status</b>                   |                      |                      |                      |                      |                      |                      |         |                          |         |
| Convicted                                  | 284,400 <sup>†</sup> | 291,300 <sup>†</sup> | 291,300 <sup>†</sup> | 273,000 <sup>†</sup> | 258,500              | 263,200 <sup>†</sup> | 248,500 | -42,800                  | -14.7%  |
| Unconvicted                                | 463,200 <sup>†</sup> | 494,300              | 457,400 <sup>†</sup> | 454,400 <sup>†</sup> | 482,100              | 482,000              | 490,000 | -4,300                   | -0.9    |
| <b>Most serious type of offense</b>        |                      |                      |                      |                      |                      |                      |         |                          |         |
| Felony                                     | ...                  | ...                  | ...                  | 494,100              | 516,400              | 516,800              | 504,900 | ...                      | ...     |
| Misdemeanor                                | ...                  | ...                  | ...                  | 193,100              | 188,000              | 194,700              | 192,000 | ...                      | ...     |
| Other <sup>f</sup>                         | ...                  | ...                  | ...                  | 40,200               | 36,300 <sup>†</sup>  | 33,600 <sup>†</sup>  | 41,600  | ...                      | ...     |

Note: Data are based on the inmate population confined on the last weekday in June, unless specified. Data are adjusted for non-response and rounded to the nearest 100. Details may not sum to totals due to rounding. See table 6 in Minton (2010) for data from 2006 to 2009 and table 3 in *Jail Inmates 2017 – Statistical Tables* (NCJ 251774, BJS, April 2019) for data from 2011 to 2014. Results may differ from previous reports in the series due to updates from jail authorities.

\*Comparison year.

<sup>†</sup>Difference with comparison year is significant at the 95% confidence level.

...Not collected. The Annual Survey of Jails began collecting inmate counts by offense severity in 2015.

<sup>a</sup>In 2015 and 2016, the Annual Survey of Jails collected demographic data on the inmate population at year-end instead of midyear. Because jails typically hold fewer inmates at year-end than at midyear, the 2015 and 2016 inmate populations were adjusted for seasonal variation and represent estimated midyear counts.

<sup>b</sup>Persons under age 18.

<sup>c</sup>Includes juveniles who were tired or awaiting trials as adults.

<sup>d</sup>Excludes persons of Hispanic origin (e.g., "white" refers to non-Hispanic white and "Black" refers to non-Hispanic Black).

<sup>e</sup>Includes Native Hawaiians, Other Pacific Islanders, or persons of two or more races.

<sup>f</sup>Includes civil infractions and unknown offenses.

Source: Zeng (2020).



**Photo 5.4** A female jail inmate awaits her cell assignment. Women constituted almost 15% of jail inmates in 2016 (Zeng, 2018, p. 4).

incarceration in prisons, have also led to a greater propensity to catch and keep low-level drug offenders in jails (Irwin, 2005; Owen, 2005; Welch, 2005; Whitman, 2003). The focus of arrests in the drug war has often been on the low-level sellers, rather than the buyers or the drug kingpins, and that has netted more people of color and women into the system. Mandatory sentences, juvenile waivers, and sentence enhancements for certain offenses have collectively led to longer sentences for most offenders and backed up the numbers of offenders in some jails either awaiting transfer to state or federal prisons or doing their time in the jails, rather than in the overcrowded prisons.

It is not clear why there have been recent declines in the numbers of people of color (particularly African Americans), vis-à-vis white people and women, incarcerated in jails, a particularly notable phenomenon in large city jails (Zeng, 2020). It could just be a minor shift that will not become a trend, or it could signal a longer-term change in the use of jails due to the recession of 2007 to 2010, a rethinking in the prosecution of the drug war (particularly as states medicalize and legalize cannabis), or some other variable not yet identified by researchers. Long-term trends do indicate that the numbers of adult men, women, juveniles (held in adult jails), and people of color have increased markedly since the 1990s and that the decreases in all of these groups except women are a recent phenomenon.

Across the two largest racial groupings (white people and African Americans) and the largest ethnic grouping (Latinx people), there have been significant increases in jail incarceration. The raw number and the percentage of white people have increased since 1990 (when there were fewer white people incarcerated in jails

than African Americans). Proportionate to their representation in the population, however, African Americans are much more likely to be incarcerated in American jails than are whites or Hispanics. As reported by the Bureau of Justice Statistics (BJS) (2008), for 2006, “Blacks were almost three times more likely than Hispanics and five times more likely than whites to be in jail” (p. 2). Again, this higher proportional rate of incarceration for African Americans, in particular, can likely be attributed to their greater concentration in impoverished neighborhoods and to the focus of the drug war that has tended to target such living areas and the selling and use of crack cocaine (see the discussion of enhanced sentences for crack cocaine in Chapter 4). But as the drug war has waned, in terms of not only crack cocaine sentences and marijuana prosecutions, and, as already mentioned, as medical and recreational marijuana are decriminalized and legalized, the number of minorities has decreased as a percentage of jail populations, among both African Americans and Latinx people (see Table 5.2).

### People Living in Poverty and People with Mental Illnesses

The late corrections scholar John Irwin (1985) once referred to the types of people who are managed in jails as the “rabble,” by which he meant “disorganized and disorderly, the lowest class of people” (p. 2). These were not just the undereducated, the under- or unemployed, or even people living in poverty or with mental illness. He meant to include all those descriptors as they related to the state of being disorganized and disorderly and as those designations might lead to permanent residence in a lower class, but he also meant that jail inmates tend to be “detached” and of “disrepute” in the sense that they offend others by committing mostly minor crimes in public places.





## Policy and Research

### HIGH SCHOOLS IN JAILS

For many years, versions of high schools have existed in juvenile detention facilities. High school classes and the ability to earn high school credits and degrees have existed in America's prisons and larger jails. But the Five Keys Charter School in San Francisco, California, claims to be the first complete high school inside an adult jail (Tucker, 2014). Started in 2003, the Five Keys Charter School graduated 20 students in 2014, and 600 total have received a high school diploma or a certification of completion or equivalency diploma since its inception (Tucker, 2014, p. 1). "The school's philosophy is founded on the five keys to an inmate's success: connection to community; a focus on family; recovery from substance abuse; education; and employment" (Tucker, 2014, p. 1). Notably, these are the same areas that are a focus of other reentry programming. In a simple comparison of graduates' recidivism (44%), compared with that of other inmates (68%), the high school graduates

do much better (Tucker, 2014, p. 1). If subsequent research includes matching of graduates with those who didn't graduate on key characteristics (such as criminal history, age, gender, mental illness, etc.) and also finds reduced recidivism, this high school in an adult jail could save the public millions of dollars while creating safer communities.

#### Discussion Questions

1. Do you think that earning a high school diploma in a jail setting is likely to benefit inmates and their communities? Why, or why not?
2. What are the likely barriers to completion of high school in most jails? How might such barriers be overcome?

Source: Tucker, J. (2014, March 4). 5 Keys Charter School helps S.F. inmates. *San Francisco Chronicle*. Available at <http://www.sfgate.com/bayarea/article/5-Keys-CharterSchool-helps-S-F-inmates-4233314.php>

### MENTAL ILLNESS, HOMELESSNESS, SUBSTANCE ABUSE, AND POVERTY

Certainly, the fact of being homeless puts a person at a greater risk for negative contact with the police; lacking a home, private matters are more likely to be subject to public viewing in public spaces, and this disturbs or offends some community members, which leads to police involvement. Those with mental illnesses are more likely to be homeless, as they are unable to manage the daily challenges that employment and keeping a roof over one's head and food in one's mouth require (McNiel, Binder, & Robinson, 2005; Severson, 2004).

Jails in the United States are full of people with mental illnesses, people experiencing homelessness, and people living in poverty. Data from two studies by BJS researchers, the first based on a survey of jail inmates in 2011 and 2012, indicate that about 26% of jail inmates reported "experiences that met the threshold for serious psychological distress (SPD) in the 30 days prior to a survey" and "44% of jail inmates had been told in the past by a mental health professional that they had a mental disorder" (Bronson & Berzofsky, 2017, p. 1). In contrast, about 10.6% of the U.S. population has symptoms of a mental illness (see Figure 5.1) (Beck, Berzofsky, Caspar, & Krebs, 2013, p. 25).

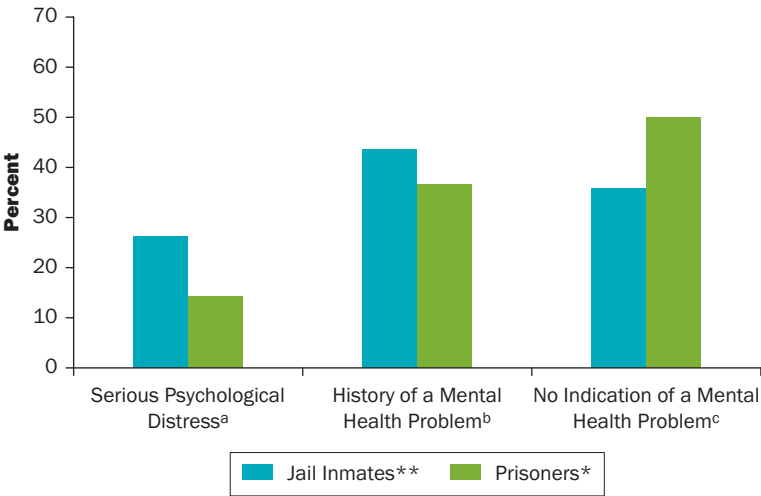
Among the 44% of jail inmates who had been told that they have mental health problems, diagnoses included major depressive disorder (30.6%), bipolar disorder (24.9%), anxiety disorder (18.4%), posttraumatic stress disorder (15.9%), personality disorder (13.5%), and schizophrenia or other psychotic disorder (11.7%) (see Table 5.3) (Bronson & Berzofsky, 2017, p. 3). Moreover, for virtually every manifestation of mental illness, more jail inmates than state or federal prisoners were likely to exhibit symptoms (Bronson & Berzofsky, 2017; James & Glaze, 2006).

A whole host of problems has been found to be associated with mental illness, including homelessness, greater criminal engagement, prior abuse, and substance use (McNiel et al., 2005). Among the findings from the BJS study of jails by James and Glaze (2006, pp. 1–2)



■ **FIGURE 5.1** Mental Health Status of Prisoners and Jail Inmates, by Type of Mental Health Indicator, 2011–2012

\*Comparison group.  
\*\*Difference with the comparison group is significant at the 95% confidence level.  
<sup>a</sup>Includes inmates with a score of 13 or more on the Kessler 6 (K6) nonspecific psychological distress scale.  
<sup>b</sup>Includes inmates who reported they had ever been told by a mental health professional they had a mental disorder.  
<sup>c</sup>Includes inmates with a score of 7 or less on the K6 and who had never been told by a mental health professional they had a mental disorder.  
Source: Bronson and Berzofsky (2017).



**TABLE 5.3** Prevalence of Mental Health Indicators Among Prisoners and Jail Inmates, by Type Indicator, 2011–2012

| MENTAL HEALTH INDICATOR  | PRISONERS <sup>*</sup> | JAIL INMATES |
|--|------------------------|--------------|
| No indication of a mental health problem <sup>a</sup>            | 49.9%                  | 36.0%**      |
| Current indicator of a mental health problem <sup>b</sup>        |                        |              |
| Serious psychological distress <sup>c</sup>                      | 14.5%                  | 26.4%**      |
| History of a mental health problem                               |                        |              |
| Ever told by mental health professional they had mental disorder | 36.9%                  | 44.3%**      |
| Major depressive disorder  | 24.2                   | 30.6**       |
| Bipolar disorder   | 17.5                   | 24.9**       |
| Schizophrenia/other psychotic disorder                           | 8.7                    | 11.7**       |
| Posttraumatic stress disorder                                    | 12.5                   | 15.9**       |
| Anxiety disorder <sup>d</sup>                                    | 11.7                   | 18.4**       |
| Personality disorder <sup>e</sup>                                | 13.0                   | 13.5         |

<sup>\*</sup>Comparison group.  
<sup>\*\*</sup>Difference with the comparison group is significant at the 95% confidence level.  
<sup>a</sup>Includes persons with a score of 7 or less on the K6 scale and who had never been told by a mental health professional they had a mental disorder.  
<sup>b</sup>Current at time of the interview.  
<sup>c</sup>Includes persons with a score of 13 or more on the K6 scale.  
<sup>d</sup>Includes panic disorder and obsessive compulsive disorder, and excludes posttraumatic stress disorder.  
<sup>e</sup>Includes antisocial and borderline personality disorder.  
Source: Bronson and Berzofsky (2017).

was that those with mental illnesses were almost twice as likely to be homeless as those jail inmates without mental illness designations (17%, as opposed to 9%). More inmates with mental health problems had prior incarcerations than those without such problems (one quarter, as opposed to one fifth). About 3 times as many jail inmates with mental health problems had histories of physical or sexual abuse than those without such problems (24%, as opposed to 8%). Almost three quarters of the inmates with mental health problems were dependent on or abused alcohol or illegal substances (74%, as opposed to 53% of those without mental health problems). In short, mental illness, along with poverty, was entangled in a whole array of societal issues for jail inmates.

Further evidence for this supposition was found by McNiel et al. (2005) in their study in San Francisco County. They found that mental illness, substance abuse, and jail incarceration were inextricably connected as life events. Those who were homeless and had mental illnesses were also more likely to have substance abuse problems, and it was also likely for this population that jail incarcerations were part of their existence as well.

### MENTAL ILLNESS AND VICTIMIZATION

Moreover, in the BJS National Inmate Survey—conducted in state and federal prisons, jails, U.S. Immigration and Customs Enforcement (ICE) detention centers, and military and facilities on Native American reservations and focused primarily on sexual victimization—the researchers found that those who have mental illnesses are much more likely to be sexually victimized while incarcerated than inmates who are not (Beck et al., 2013). Among their important findings were the conclusions that inmates with serious psychological distress reported high rates of inmate-on-inmate and staff sexual victimization in 2011 and 2012 (Beck et al., 2013, pp. 6–8):

- Among state and federal prison inmates, an estimated 6.3% of those identified with serious psychological distress reported that they were sexually victimized by other inmates. In comparison, among prisoners with no indications of mental illness, 0.7% reported being victimized by other inmates.
- Similar differences were reported by jail inmates. An estimated 3.6% of those identified with serious psychological distress reported inmate-on-inmate sexual victimization, compared with 0.7% of inmates with no indications of mental illness.
- Rates of serious psychological distress in prisons (14.7%) and jails (26.3%) were substantially higher than the rate (3.0%) in the U.S. noninstitutional population age 18 or older.
- For each of the measured demographic subgroups, inmates with serious psychological distress reported higher rates of inmate-on-inmate sexual victimization than inmates without mental health problems.
- Among inmates with serious psychological distress, non-heterosexual inmates reported the highest rates of inmate-on-inmate sexual victimization (21.0% of prison inmates and 14.7% of jail inmates).

What we might learn from these findings is that jails hold more inmates with psychological problems than do prisons, and as with prisons, this mental illness makes them more vulnerable to sexual abuse. These data tell us that the likelihood of abuse is also heightened if the inmate is LGBTQ+ and has serious psychological problems.

### MENTAL ILLNESS AND SOLITARY CONFINEMENT

Mental illness also makes jail inmates more likely candidates for the use of solitary confinement and targets of other violent inmates. In a study of the Rikers Island 10-jail complex by New York City, city health officials noted that a disproportionate number of inmates have mental health diagnoses (Pearson, 2015). It was reported that the health care workers, who are employed by the city but are bound by medical ethics, are reticent to approve solitary confinement for such inmates, as they know it can exacerbate their already precarious mental health status. Yet people with mental illnesses in this jail are more likely to be placed in solitary because of their behavior problems or as protection. In an earlier study of the Rikers Island jail complex by the U.S. Department of Justice (DOJ) and by the *New York Times*, it was found that a culture of violence was predominant in these jails (particularly those for juveniles) and that too often, the target of this violence was the adult and juvenile inmates with mental illnesses (Hays, 2017; Seabrook, 2014).

### CALLS FOR REFORM IN THE CARE OF PEOPLE WITH MENTAL ILLNESSES

The abuse of and poor conditions for people with mental illnesses are not a problem reserved for the Rikers Island jail inmates. As Andrew Cohen (2013) documented in an article in the *Atlantic*, a number of reports emanating from the Justice Department, the American Civil Liberties Union, and a federal judicial decision indicate the abuse is widespread and exists in both jails and prisons. “Prison [and jail] officials have failed to provide a constitutional level of care in virtually every respect, from providing medication and treatment to protecting the men from committing suicide” (Cohen, 2013, p. 1). In fact, the problematic treatment of jail inmates with mental illnesses has risen to crisis status for the Council of State Governments. As a consequence, on May 6, 2015, they launched a national initiative to help counties address this issue in their jails (Council of State Governments Justice Center, 2015). Remedies, embodied in what is termed an *evidence-based Stepping Up Program*, will focus on diversion from jail to other services and the provision of treatment and better care for those who have mental illnesses.

### Jails and Immigrants

Under the Trump administration there has been a renewed interest in preventing undocumented immigrants from entering and staying in the country until their requests for asylum are addressed. Previously, undocumented immigrants might be held by or for Immigration and Customs Enforcement (a federal law enforcement agency located within the Department of Homeland Security) in jails or their versions of prisons for a short period of time and then released to communities to await a determination of their status. Instead, under the Trump administration there has been an expansion in the use of corrections (jails and prisons) to hold adults and their children crossing the borders or entering the country without documents.

In the past year researchers have determined that some undocumented teens, even some who have green cards, are being secretly held without being charged in juvenile facilities in the Northwest (e.g., the Cowlitz County Youth Services Center) and at other facilities around the country (e.g., the Northern Oregon Regional Correctional Facility juvenile division, the Abraxas Academy in Pennsylvania) (Shapiro, 2019; Tufel, 2019). Angelina Godoy, a professor at the University of Washington, has alleged that these kids are held as if they are in “black sites” or without charges and oversight (Ellis & Hicken, 2019). She claims that ICE has blocked the Cowlitz County jail from revealing the charges these teens face or how many kids they are holding.

Referring to the testimony of a former detainee in Cowlitz County, Godoy described an environment in which detained children have engaged in self-harm and endured harsh forms of punishment. For example, some have been placed in solitary confinement and strapped to a chair, where they are monitored by multiple security cameras.



## Perspective From a Practitioner

**BRIAN COLE, COUNTY CORRECTIONS DIRECTOR**



**Position:** Corrections director

**Location:** Shawnee County Department of Corrections, Kansas

**Education:** BA in criminal justice and BA in psychology, Washburn University, 1989

### What are the primary duties and responsibilities of a director of a county department of corrections?

Under administrative direction of the Board of County Commissioners, this position administers the adult and juvenile detention programs of Shawnee County, Kansas; ensures that offenders placed in custody are housed in a safe, secure manner and that offenders receive appropriately fair and humane treatment by staff; monitors the overall security of the centers and regularly tours the facilities to ensure that the highest security standards are maintained; proactively seeks to improve offender processes to enhance the security and efficiency of the agency; creates and expects a staff culture of integrity in the reporting of misconduct by other staff and offenders; and visits offender living units and speaks with offenders to gain sense of morale of offenders and to monitor operations.

This position oversees programs to ensure compliance with federal, state, and local laws,

regulations, and accrediting entity standards; plans and coordinates the annual budget, staffing, and program needs for the department; and ensures that expenditures are within budget parameters and proactively seeks and implements methods by which the department can save funds.

This position also proactively recommends changes to the physical plant that will provide enhanced efficiency and security; creates future projections for physical plant expansion; develops and maintains positive working relationships with employees of other county agencies, other law enforcement agencies, colleges and universities, and other agencies and organizations as appropriate; delegates an appropriate amount of work to staff to encourage their professional growth and seeks opportunities for professional self-growth; and seeks and completes public speaking engagements to promote positive community relations. The person holding this position is expected to respond to media requests, as appropriate, and attend community functions as a representative of the department.

### What characteristics make a good director of a county department of corrections?

- Integrity
- Leadership
- Flexibility
- Initiative
- Sense of humor
- Compassion for staff
- Proactive
- Confidence
- Public speaking skills
- Good written and verbal communication skills

### What is a typical day like for a director of a county department of corrections?

A typical day for me would be one that starts with meeting with staff and determining the priorities of the day. In corrections, you never have a “clean desk.” As one project ends, you always are starting a new one. On a daily basis, I speak with my executive team to get a brief update on projects, personnel,

*(Continued)*

(Continued)

budget, special-needs inmates, and physical plant issues. I also meet with our mental health team leader daily to review high-risk inmate statuses. Each day, I spend time researching current events and legal trends, trying to stay as proactive as possible to avoid complacency and litigation. I speak with inmates on a daily basis and answer requests. I spend time meeting with the public to ensure our agency is meeting and exceeding citizen expectations, and I provide feedback to our commissioners.

**What is your advice to someone either wishing to study or now studying criminal justice to become a practitioner in this career field?**

Working in the field of corrections takes committed people. On a daily basis, you work with incarcerated individuals who have made (in some cases) some very bad life decisions. You have to be one who can separate emotion from your job and understand that you are managing people and managing problems. You have to have an appreciation for the environment you are working within. This is a stressful but very rewarding job. Corrections can be a career, not just another job. You make decisions each day that could mean the life or death of inmates, staff, and the community. You cannot take shortcuts. Learn as much as you can about your agency, the philosophy, and the culture that the leader of the organization has put in place. You have a great opportunity to help others, work as a team, and truly better your community.

**What are the biggest challenges facing corrections?**

**Inmates With Mental Illnesses**

Jails are becoming community mental health facilities for the mentally ill. With this being a trend in some parts of the country, a citizen has a better chance of receiving treatment in a jail than in his

or her community. As directors, we must educate our staff to meet this challenge. One way is through crisis intervention team (CIT) training.

It is a fact that some people with mental illnesses will end up in jail. In some instances, this may be the safest and best option for them. However, inmates in jail go into crisis, and correctional staff must be able to handle these emergency situations. Through CIT training, our staff has been able to identify crisis situations; defuse these situations; communicate with the inmates in crisis; and, most of the time, see the incidents to a positive resolution that does not result in harm to the inmate or staff. The end result is officer and inmate safety, and then, we will refer the inmate to mental health services for treatment. We have CIT training available two times a year for all staff.

**Transgender Inmates**

Historically, correctional institutions have classified inmates by their genitalia, not by their gender identity. Often transgender women are placed in male housing units, and transgender men are placed in female housing units. Transgender inmates have the right to be treated with dignity and respect and be free from harm and harassment.

A key federal court opinion out of the First Circuit Court of Appeals shed light on an issue that all correctional managers must be aware of. Increasingly, correctional managers must take the proactive steps to create and implement policy that begins with the early identification of transgender inmates, completion of medical and mental health evaluations and treatment (including gender reassignment surgery), proper housing, programs, and clear protocols for routine interactions, such as showering and pat-downs. As with every category of individual liberties, it is incumbent upon correctional leadership to identify and address inmates' rights, as framed by legislative, executive, and judicial decisions.

According to an Intergovernmental Service Agreement for Housing Federal Detainees document, Cowlitz County makes \$136 per day on a detainee. Once a detainee turns 18 years old, they are transferred to the Northwest Detention Center in Tacoma to be deported. "Families fear endangering themselves or their kids if they speak out," Godoy tweeted. "And ICE is suing to make sure the info never gets out. This has to stop" (Tufel, 2019, p. 2).





## In Focus 5.1

### AN ACCOUNT OF SUICIDE, MENTAL HEALTH, AND THE NEED FOR INCREASED MENTAL HEALTH SERVICES

Jack committed suicide in the fall of 2018, shortly after his release as a parolee in Longview, Washington. Jack was born and grew up in the Vancouver area (close to Longview) in a family in which his father died young, and his mother struggled to raise three kids alone and to make ends meet with jobs that took her away from home. The family was working class or poor, and the neighborhood and its schools reflected this fact. Jack got involved in trouble early, including delinquency, substance abuse, and truancy as well as dropping out of high school and getting into trouble with the law, which resulted in multiple placements in detention facilities as a child. After a time, he was on the radar for the Vancouver Police Department as both a juvenile and an adult and became the “usual suspect” for them, sometimes deservedly so and sometimes not. His cousin wrote that he “certainly suffered from oppositional defiance disorder, which was linked to early trauma.”

As an adult, he struggled because of a lack of education and opportunity. He turned to drugs, theft, and the manufacturing of narcotics. From an early age, he spent a lot of time on the streets and was involved with countless assaults, as both an offender and a victim. It was always so shocking what the streets brought out of him because he was an extremely kind, charismatic, and lovable person.

Jack was in and out, mostly in, state and federal prisons during his adult life. For the past decade, he was in Washington state prisons (most recently on work release) and received “excellent vocational and educational programming,” earning an associate’s degree while incarcerated with plans to earn a BA when released and to become a substance abuse counselor so that he could use his knowledge and experience to help others. His cousin explained it this way:

The facilities which he was housed in were all over and often far from home. I am guessing that he was probably screened for psychiatric or mental health issues at some point, but I doubt he received such services. Probably because he was ashamed of his past and depressed over it (I strongly sensed this by reading between the lines) and too embarrassed to make himself vulnerable by sharing his feelings with a

professional whom he probably didn’t trust because they were agents of the state. In this scenario it seemed that he faked being of sound mental health and kept hidden what he was dealing with. To the best of my knowledge he was well behaved while incarcerated and his charisma earned him a great deal of respect from other inmates and staff.

It was difficult for family to contact Jack to offer support while he was in work release. The phone, as with all phones in correctional facilities, had high fees attached to it that made it prohibitively expensive for inmates without financial means and their families living in poverty to remain in contact and to maintain bonds and communication. The work release did help Jack secure a good job, and he was able to get his own apartment. But he took his own life within weeks of release. “No one in my family was aware of his mental state as he [appeared to be] extremely optimistic and kept it hidden.” His family did not think he was using drugs or drinking alcohol while released. However, he was released into a community that struggles with substance abuse and one that was familiar to him as it was his old stomping grounds for crime and contained his substance abuse network.

His family suspected that this placement, with its heightened temptations for drug use and crime, along with his mental state, may have led to his suicide. It would have been hard for him to resist the “strong bonds with the local criminogenic community, which was presumably reaching out to him (perhaps through Facebook),” and which was “in conflict with his pro-social aspirations.” Jack’s cousin argued that the suicide was not inevitable. If he had been allowed more social support from his family while incarcerated (via phone calls and visits) and if he had been given adequate psychological treatment, Jack might be alive today.

*In the fall of 2018, a young man (who is referred to as Jack in the above story) had committed suicide shortly after his release as a parolee in Longview, Washington. Jack’s cousin relayed his story in a series of e-mails, and a recounting of it appears here; all of the information and much of the writing itself is the cousin’s (who prefers to remain anonymous).*

## Medical Problems

**LO 5.4** Describe the various approaches jails take to address medical problems of inmates.

One of the social issues that is particularly problematic for jail inmates and the people who manage them is the relatively poor health of people incarcerated in jails. According to the 2011–2012 study of jail inmates by the BJS (Maruschak, 2015), half of jail inmates reported chronic medical problems, such as cancer and blood pressure or heart problems. According to an earlier iteration of this study (Maruschak, 2006, p. 1), most of these medical maladies preceded placement in jail and included the following (in order of prevalence): arthritis, hypertension, asthma, heart problems, cancer, paralysis, stroke, diabetes, kidney problems, liver problems, hepatitis, sexually transmitted diseases, tuberculosis, and HIV infection. A small percentage of inmates (2%) were so medically impaired that they needed to use a cane, walker, or wheelchair. Almost 75% were overweight, and more than 60% were morbidly obese (Maruschak, 2015, p. 1). According to the Mortality in Local Jails (2000–2014) annual study by the BJS, heart disease is the second leading cause of death in jails, with other illnesses related to AIDS, cancer, respiratory disease, liver disease, and other afflictions (in that order) accounting for jail deaths by illness (Noonan, 2016, p. 5; Noonan, Rohloff, & Ginder, 2015).

### Older Inmates

As one might expect, older inmates—and in prisons and jails, because of the premature aging of inmates, that can mean anyone over 50—are much more prone to some of these medical maladies than are younger inmates (Hamada, 2015). In one BJS study, 61% of those older than 45 reported medical problems (Maruschak, 2006, p. 1). With the exception of asthma and HIV infection, which tended to be more prevalent among younger inmates, the older inmates were much more likely to have the other medical problems tallied in this report; this means that older inmates are more costly to manage in jails because of their greater need for medical care.

### Female Inmates

Like older inmates, women were much more likely to report medical problems to the BJS researchers (53% for women, as opposed to 35% for men; Maruschak, 2006, p. 2). They reported a rate of cancer that was almost 8 times that of men (831 per 10,000 female inmates, compared with 108 per 10,000 male inmates), with the most common types being cervical cancer for women and skin cancer for men. In fact, of every medical problem documented in the study, the women reported greater prevalence than the men, with the exception of paralysis, for which they were even with men, and tuberculosis, which a slightly greater percentage of men reported (4.3% of men, as opposed to 4.0% of women; Maruschak, 2006, p. 2). In the study of mortality in jails by the BJS, women were more likely to die in jail from illnesses than men, though their overall mortality rate was about the same as that of men, who were more likely to die of other causes such as suicide (Noonan, 2016).

### Juvenile Inmates

Incarcerated youth have their own set of potentially debilitating health problems that also present an immediate health risk to communities. In a study of adolescents in a juvenile detention center in Chicago, about 5% of the teens had contracted gonorrhea, and almost

15% had chlamydia (Broussard et al., 2002, p. 8). Girls were more than 3 times as likely to have one of these diseases as were boys in this study.

### The Right to Medical Care

According to the 1976 Supreme Court case *Estelle v. Gamble*, inmates have a constitutional right to reasonable medical care. The court held that to be *deliberately indifferent* to the medical needs of inmates would violate the Eighth Amendment prohibition against cruel and unusual punishment. The Patient Protection and Affordable Care Act of 2010 (ACA; commonly referred to as Obamacare) also requires that jails provide medical and mental health care within their facilities (Tally, 2015). Needless to say, treating such problems while providing care that meets this mandate requires that a jail of any size have budgetary coverage for the salaries of nurses; a contract with a local doctor, mental health provider, and dentist; and an arrangement with local hospitals. Moreover, regular staff need basic training in cardiopulmonary resuscitation and other medical knowledge (e.g., to know when someone is exhibiting the symptoms of a heart attack or stroke or the symptoms of mental illness) so that when problems arise, staff recognize how serious they might be and know how to address them or whom to call (Kerle, 2011; Rigby, 2007).

Some jails are addressing these issues by contracting with private companies to provide medical services or using telemedicine as a means of delivering some services. The National Commission on Correctional Health Care recommends that should jails go the route of private provision of services, they make sure that such programs are properly accredited so that the services provided meet national standards (Kerle, 2011). When such matters as obtaining and maintaining quality care are not attended to, as is sometimes the case in jails and prisons (Sokol, 2017; Vaughn & Carroll, 1998; Vaughn & Smith, 1999), jail inmates are likely to suffer the consequences in terms of continued poor health (Sturgess & Macher, 2005). In addition, jails may be sued for failure to provide care, and communities might be exposed to contagious diseases, along with liability for legal bills (Clark, 1991; Macher, 2007; Rigby, 2007). Clearly, the provision of decent health care to incarcerated persons is important not just because the Supreme Court mandates it or because it is the moral thing to do for people who are not free to access health care on their own but because the vast majority of jail inmates return to the community, most within a week or two (Kerle, 2011). Therefore, to prevent the spread of diseases and to save lives both inside and outside of jails, basic medical care would appear to be called for. Some jails are evidently expending energy to address this area of incarceration, as 4 in 10 of the inmates in the 2002 BJS study reported that they had had medical exams since their admission (Maruschak, 2006, p. 1).

### Jails and the Novel Coronavirus

As COVID-19 spread across the United States in late 2019 and early 2020, jails and prisons were faced with the difficulty of securing the safety of staff and inmates in environments that are often crowded and that require close personal contact between staff and inmates and between inmates and inmates. It is not surprising that, given these conditions, a number



**Photo 5.5** An inmate receives an eye exam inside a maximum security prison.

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of inmates and staff contracted the virus, and it was at this point that several jail facilities worked with judges to authorize the release of inmates accused or convicted of minor offenses, the diverting of such offenders to other programs or processes, or ROR. The Centers for Disease Control and Prevention, recognizing the potential catastrophe looming should jails and prisons not institute the precautions of social distancing, sanitation, and use of personal protective equipment (PPE) that was occurring in the free community, recommended a number of steps that might be taken to address such issues, including as much social distancing as feasible, the provision of greater sanitation, masks, gloves for staff (and sometimes inmates), and testing of staff and inmates (American Correctional Association, 2020). As the general public has difficulty in securing enough PPE or getting tested regularly, or at all, it is doubtful that most jails or prisons will be able to abide by these recommendations. However, the release of less serious offenders is one step toward making the others more manageable (Vestal, 2020).

### Substance Abuse and Jails

It is one of those oft-cited assumptions that people in prisons and jails have substance abuse problems, and this is one area of social commentary that actually fits social reality. According to a 2002 BJS study of jail inmates (the latest available data at the time of writing), fully 68% of jail inmates reported substance abuse or dependence problems (Karberg & James, 2005, p. 1). In fact, half of convicted inmates reported being under the influence at the time they committed their offenses, and 16% said that they committed the crimes to get money for drugs. Female and white inmates were both more likely to report drug use at the time of their offenses (Karberg & James, 2005, p. 5). For convicted offenders who used at the time of offense, alcohol was more likely to be in their systems than drugs (33.3% for alcohol, as opposed to 28.8% for drugs). The drugs of choice varied and included, by prevalence of use, marijuana, cocaine or crack, hallucinogens, stimulants (including methamphetamines), and inhalants (Karberg & James, 2005, p. 6). Not surprisingly, those who reported substance abuse problems were also more likely to have criminal records and to have been homeless before incarceration. White, Goldkamp, and Campbell (2006, p. 303) found in their study conducted in New Mexico that many people who are arrested and subsequently come into contact with the local jail have “co-occurring disorders,” such as mental illness and substance abuse problems.

Violent offenders were more likely to use alcohol than other substances at the time of the offense. But violent offenders were also least likely, with the exception of public order offenders, to report being on drugs or alcohol at the time of the offense (Karberg & James, 2005, p. 6).

Fully 63% of those with substance abuse problems had been in treatment programs before (Karberg & James, 2005, p. 1). Most such programs were of the self-help variety, such as Alcoholics Anonymous or Narcotics Anonymous. However, 44% of these people had actually been in residential treatment programs or detoxification programs, had received professional counseling, or had been put on maintenance drugs (Karberg & James, 2005, p. 8). Treatment for convicted offenders in jails, as of 2002, was at 6%. Notably, provision of treatment in jails is difficult because most inmates are out of the facility within a week, and about 60% are unconvicted, so as people who are presumed innocent, they cannot be coerced into getting treatment. Therefore, treatment programs are usually focused on those who meet all of the following criteria: They have substance abuse problems, they are convicted, and they are longer-term inmates. Even having said this, the amount of treatment programming in jails does not fit the obvious need (Kerle, 2011). Rates for those who died of alcohol or drug intoxication in jails in 2014 tended to be higher for white, female, middle-aged, convicted inmates and those who had drug or public order offense charges or convictions (Noonan, 2016, p. 10).

## Suicides, Gangs, and Sexual Violence in Jails

### LO 5.5 Discuss how jails manage sexual violence, gangs, and suicides.

Inmates are often incarcerated for violent offenses and may continue to inflict these offenses within the confines of the facility. Challenges in violence among inmates such as gang and sexual violence need to be managed. The inmate population with mental health issues and victims of these violent acts within the system also require management of suicide.

### Suicides

As indicated from the data presented previously, those incarcerated in jails often enter them at some level of intoxication. Moreover, many have mental disabilities, and if this is their first experience with jail, it might be exacerbated by the shock of incarceration. Most who are booked into jails are impoverished, and some are homeless. Also, being booked itself may represent both the mental and physical low points of their lives. Such a combination of conditions may predispose some jail inmates to not just contemplate suicide but to attempt it (Winfree & Wooldredge, 1991; Winter, 2003).

In 1986, the National Center on Institutions and Alternatives (NCIA) did a study of suicides in jails. Twenty years later, in 2006, the National Institute of Corrections (NIC) funded another NCIA study of the status of jail suicides. Meanwhile, every year the BJS publishes research on mortality in jails and prisons (see, e.g., Carson & Cowhig, 2020). On the basis of 464 suicides that occurred in 2005 and 2006 and were studied by the NCIA, and the annual survey of jails and their mortality data by the BJS for 2016 (and previously), the following are facts about suicide victims in jails and their characteristics:

- Suicide was the leading cause of death of adults in jails from 2006 to 2016. It accounted for 31% of deaths, or the same amount as in 2000 (BJS).
- Sixty-seven percent were white (NCIA). Rates for white people were more than 5.25 times higher than for Black people and 3.5 times higher than for Latinx people (BJS).
- Ninety-three percent were male (NCIA). Rates for men were 1.6 times greater than for women (BJS).
- The average age was 35 (NCIA). Rates tended to be spread across the age span (BJS).
- Forty-two percent were single (NCIA).
- Forty-three percent were held on personal or violent charges (NCIA). Rates for violent charges and offenses were 2.5 to 5 times higher than property, drug, or public order and other offenses (BJS).
- Forty-seven percent had histories of substance abuse (NCIA).
- Twenty-eight percent had histories of medical problems (NCIA).
- Thirty-eight percent had histories of mental illness (NCIA).
- Twenty percent had histories of taking psychotropic medications (NCIA).
- Thirty-four percent had histories of suicidal behavior (NCIA).
- Deaths were evenly distributed throughout the year; certain seasons or holidays did not account for more suicides (NCIA).
- Thirty-two percent occurred between 3:01 p.m. and 9 p.m. (NCIA).



- Twenty-three percent occurred within the first 24 hours, 27% between 2 and 14 days, and 20% between 1 and 4 months after incarceration (Hayes, 2010, p. xi; NCIA).
- Convicted offenders had a rate of suicide that was 7.33 times that of the unconvicted (BJS).
- Forty-seven percent of the suicides took place in general housing units (BJS).

These data indicate that the profile of the suicide-prone inmate in jail is that of someone who is male, white, of indeterminate age, and in jail on a violent offense charge, with a history of substance abuse and at the beginning of his jail incarceration. Almost half of those who commit suicide are not in special housing units but are in the general population. Other data, from the BJS and other sources, flesh out and contextualize these findings (see Figure 5.2).

Data obtained by BJS in a 2-year study (2000–2002) of deaths while in custody (Mumola, 2005) and by Winter (2003) in her study of 10 years of suicide data from jails in one midwestern state tend to confirm the previously stated findings. Winter also found that those who committed suicide tended to be younger, had no histories of mental or physical illness, did not necessarily “exhibit suicidal tendencies,” and were more likely to be intoxicated with alcohol when admitted (p. 138).

Moreover, according to Mumola (2005), the suicide rate for large, primarily urban jails, which tend to hold fewer white people, was about half that of the smaller jails (as cited in Mumola, 2005). Similarly, in a study by Tartaro and Ruddell (2006), the researchers also found that smaller jails (with less than a 100-bed capacity) had a 2 to 5 times greater prevalence of attempted and completed suicides than larger jails did (p. 81). In this study, crowded jails and those with “special-needs and long-term inmates” were also more likely to have higher rates of suicide completion (Tartaro & Ruddell, 2006, p. 81). Notably, suicide and deaths generally are more common in larger jails that hold more people (Noonan, 2016).

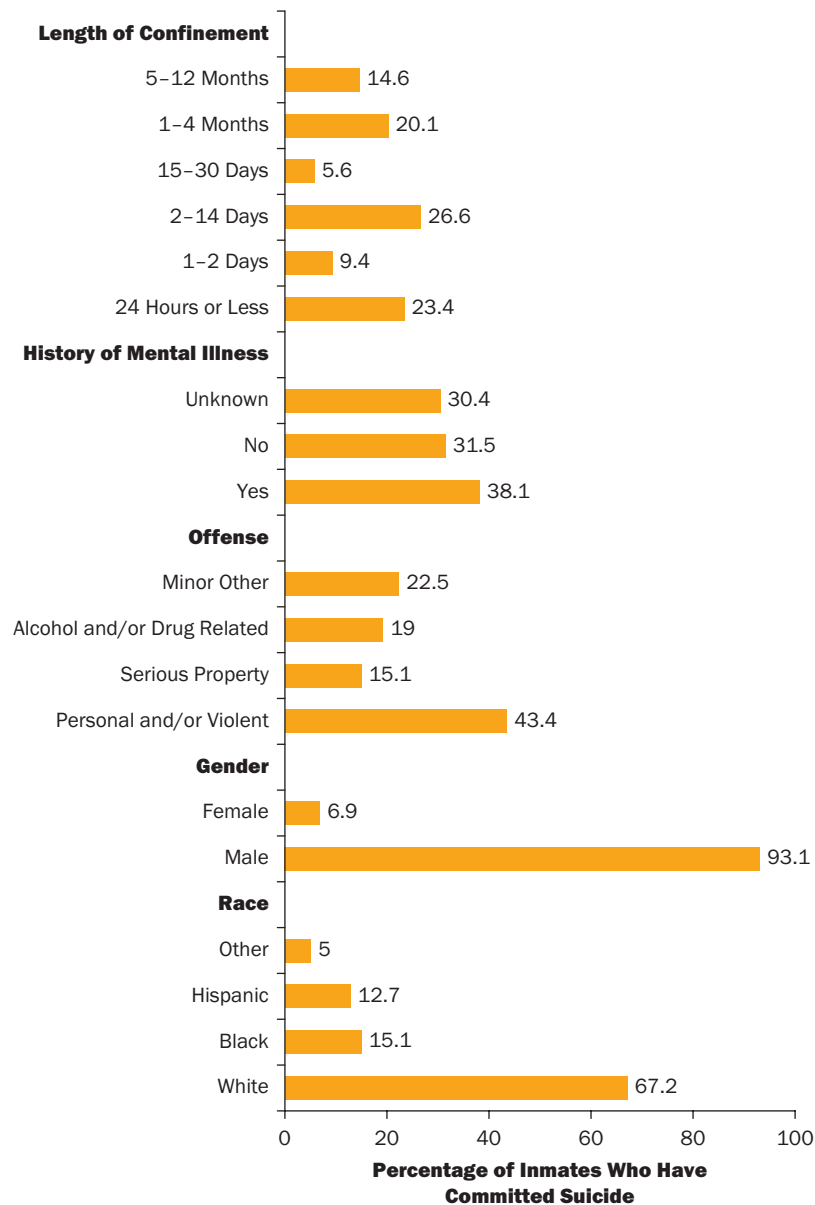
The shock of incarceration may be one explanation for jail suicide rates, although why this shock might be greater for those in smaller jails is not entirely clear. The BJS from Mumola (2005) and NCIA data do indicate that about half of the suicides occur within the first 9 days—for women, it was 4 days—and in the cell of the person committing suicide (Carson & Cowhig, 2020; Mumola, 2005).

Larger jails, with their greater resources and higher level of training for staff, may be better equipped than their smaller counterparts to monitor and prevent suicides in their facilities (it is also worth noting that 80% of jails had no suicides in 2014 [Noonan, 2016]). For instance, if the younger inmates are fearful of being housed with and possibly abused by adults, some less crowded and perhaps larger jails may have the luxury of segregating young men from older men and thereby lessening the fear that might precipitate some suicides. Winter’s (2003) conclusion, after studying 18 years’ worth of administrative data on suicides in a midwestern jail, is that keeping and accessing more complete records regarding suicides is critical to preventing them. It is possible that larger, more urban jails are better able to handle this responsibility. In their comparison study of rural and urban jails, Applegate and Sitren (2008) remarked on the greater capacity of urban jails, relative to rural jails, to provide services to inmates, which one assumes would directly and indirectly affect the rate of suicides in these jails.

However, large jails still have their share of problems with suicides. In a study by Selling et al. (2014, p. 163) of suicides in the New York City jail system, the researchers found that between 2007 and 2011, there were eight deaths resulting from suicide and 2,514 cases of self-injury (out of yearly admissions of 80,000 and an average daily population of about 12,500). The self-injuries had increased in number during this time period. The methods of self-injury included, among others, “lacerations, ligatures tied around the neck, attempted

■ **FIGURE 5.2** Predictors of Jail Suicide

Source: Based on data from Hayes (2010, p. xi). Most recent data available.



overdose, and swallowed foreign objects” (Selling et al., 2014, p. 163). In response to this research, the jail managers (there are several New York City jails) improved the surveillance system and the electronic health records so they could better watch and document those who would be most likely to need help.

We do know that suicide as of 2016 was the leading cause of death among inmates in jails, explaining 31.1% (Carson & Cowhig, 2020, p. 5). In the past, jails had 3 times the rate of suicides that prisons do, though their homicide rates are comparable (Mumola, 2005). Collectively, illnesses still eclipse suicides, though suicides are the single most common explanation for death in jails (Carson & Cowhig, 2020; Noonan, 2016).

## Gangs

Gangs present myriad management problems for jail and prison managers. Violence, including robberies, assaults, drug smuggling, and even murders, tends to naturally follow in their wake and prevents the orderly and safe operation of the facility for staff and inmates. Because gangs are more prevalent in large urban areas, they are more of a problem in large urban jails. Yet the estimates of their prevalence in large jail systems ranges from 16% to 25%, depending on the location of the jail (Tapia, 2014, p. 258). However, these estimates are likely to be low, as gang members are usually not forthcoming about their membership in a correctional environment (Ruddell, Decker, & Egley, 2006). It is generally true that larger urban jails have more problems with gangs. As jails are more likely to involve a short-term period of incarceration, however, they may be less likely to hold as many gang members as prisons (Alarid, 2000).

To counter the collective influence of gangs, jails will try to separate members in housing units, placing the most disruptive members in segregation (Tapia, 2014). Another tactic is to document those involved in gangs and to track them and their activities throughout the jail system. However, though gang members, by their definition, might appear to present a monolithic adherence to gang orthodoxy, there is some indication that not all gang members agree about how the gang should be operated and the tactics they should use. For instance, in a study by Tapia (2014) of Latinx gangs in Texas, it was found that there were intergenerational disputes on these matters, with younger inmates tending to organize themselves in more autonomous groups, which are as much support groups as criminal enterprises in jails. In that same research, though, the gangs identified by correctional officer respondents as most prevalent in Texas jails were the Texas Mexican Mafia, the Aryan Brotherhood, Bloods, the Texas Syndicate, Crips, Tango Blast, Tango Orejon, Aryan Circle, and Hermandad de Pistoleros Latinos (Tapia, 2014, p. 262).

## Sexual Violence

**Prison Rape Elimination Act of 2003 (PREA):** Act that mandated that the Bureau of Justice Statistics collect data on sexual assaults in adult and juvenile jails and prisons and that it identify facilities with high levels of victimization.

The **Prison Rape Elimination Act of 2003 (PREA)** mandated that the BJS collect data on sexual assaults in adult and juvenile jails and prisons and that it identify facilities with high levels of victimization. According to the BJS-promulgated report *Sexual Victimization Reported by Adult Correctional Authorities* for 2012–2015, the rate of sexual allegations by prison inmates is more than 1.5 times that of jail inmates as perpetrated by other jail inmates or staff in the previous 12 months (Rantala, 2018, p. 6). In 2015, there were 24,661 allegations of sexual victimization in both jails and prisons, which was almost triple the number reported in 2011 (8,768; Rantala, 2018, p. 1). The BJS thinks this huge increase is in part explained by the release of national standards regarding such abuse in 2012. There were 5,809 allegations of abuse in 2015, compared with 1,406 in 2005 (Rantala, 2018, p. 5). Overall only 8% of the alleged assaults by inmates on inmates and staff on inmates were substantiated or found to be true after an investigation (Rantala, 2018, p. 7). Having said this, however, we should recognize that in most such instances of sexual violence, it would be very difficult to find evidence, as it is in the free world, particularly if the one perpetrating the victimization was a staff member. Notably, some of these victimizations were likely “consensual,” though it is legally impossible for inmates, who occupy a powerless position vis-à-vis staff, to give consent to them.

In an earlier study by BJS, female inmates in jails (as well as in prisons) were more than twice as likely as male inmates to experience sexual victimization perpetrated by another inmate (3.6% for women vs. 1.4% for men; Beck et al., 2013, p. 17). Male inmates in jails and prisons were slightly more likely to be victims of staff perpetrators. There was higher victimization among inmates who were two or more races or who were white by other inmates and staff. Generally, younger inmates (younger than 34) and those with college degrees were targeted more by both inmates and staff for sexual victimization.

## ? Ethical Issue

### ■ WHAT WOULD YOU DO?

You are a correctional officer who works in the booking area of a large urban jail. About once per month, the jail admits one or two transgender inmates. You notice that one male colleague named Joe is particularly abusive of the transgender female inmates (calling them names, strip-searching them, making them stand around naked in front of other staff and inmates while making derogatory comments about their body parts, doing unnecessary pat-downs that focus inordinately on their breasts and genitals, referring to them using male pronouns, etc.). Although Joe is the primary instigator of this abuse, there are a few others, male and female, who play along and others who try to ignore it (including

you). You know your sergeant also has witnessed the abuse and has done nothing to stop it. You are unaware of any complaints being lodged by staff regarding Joe's or the others' behavior, though it is openly practiced in the booking area at least once or twice a month. You have heard that a lawsuit has been filed by a former inmate about Joe's and the other officers' treatment of her. As a booking officer, you are likely to be called to testify about what happened in her case (all of the abuse mentioned previously). What will you do if called to testify? How will you explain your failure to report this abuse beforehand? What do you think will be the likely outcomes of the choices you made and make?

As mentioned previously in this chapter, LGBTQ+ inmates were much more likely to be victimized by both staff and inmates in both prisons and jails. In prisons, 1.2% and 2.1% of heterosexual inmates experienced either inmate-on-inmate or staff-on-inmate sexual victimization, compared with 12.2% and 5.4% of LGBTQ+ inmates. In jails, the figures were similarly startling, with 1.2% and 1.7% of heterosexual inmates who experienced either inmate-on-inmate or staff-on-inmate sexual victimization, compared with 8.5% and 4.3% of LGBTI inmates (Beck et al., 2013, p. 18). In essence, in jails, the LGBTQ+ inmates were 7 times more likely to experience sexual victimization by other inmates and 2.5 times more likely to experience sexual victimization by staff than were heterosexuals.

Also, as mentioned previously in this chapter, those with mental illnesses were much more likely to experience sexual victimization than were inmates without such maladies (Beck et al., 2013). Jail inmates who had mental illnesses experienced more inmate-on-inmate and staff-on-inmate sexual victimization than inmates without mental health problems.

More than half of the substantiated staff-on-inmate sexual misconduct victimization was committed by female staff on male inmates:

Among all substantiated incidents between 2009 and 2011, the majority (84 percent) of those perpetrated by female staff involved a sexual relationship that “appeared to be willing,” compared to 37 percent of those perpetrated by male staff. Any sexual contact between inmates and staff is illegal, regardless of whether it “appeared to be willing.” (Beck, Rantala, & Rexroat, 2014, p. 1)

Other research has found that female staff were more likely perpetrators in prisons, though we know from research on Texas prisons that when the offense was actual sexual battery, the staff offender was more likely to be male (Marquart, Barnhill, & Balshaw-Biddle, 2001). Male staff were more likely the perpetrators of sexual violence in jails. For instance, in a 2007 case involving the Yuma County, Arizona, jail, three male officers were charged with unlawful sexual conduct with three female inmates (Reutter, 2007).

When the allegation was substantiated, most of the staff were fired (78%), and almost half (45%) were arrested, prosecuted, or convicted (Beck et al., 2014, p. 1). Inmate perpetrators in substantiated cases were more likely to be placed in solitary confinement (73%), and about half (48%) were prosecuted if the act was a nonconsensual sex act (Beck et al., 2014, p. 1).

Researchers at the Urban Institute (see, e.g., La Vigne, Debus-Sherrill, Brazzell, & Downey, 2011, p. 3) used a situational crime prevention approach with the hoped-for result of reducing violence and sexual assault after studying three jails. Their recommendations were multifaceted and included studying past incidents of violence to determine what characteristics of the situation might be changed to reduce future violence; increasing surveillance cameras outside of cells (having a record of who goes in and out, as cells are a typical locus for violence); ensuring that staff are around consistently; hiring better quality staff; training staff in crisis intervention and about violence, mental illness, suicide, and sexual assault; having an enforceable no-tolerance policy for staff sexual misconduct; developing strategies to reduce violence and sexual assault; reducing the contraband coming into the jail, as this is often linked with violence; and making sure that inmates who need it get their medications and mental health care, as not getting it on time may precipitate violence.



## In Focus 5.2

### PRISON RAPE ELIMINATION ACT CONTROVERSY

As mentioned in the text of this chapter, the Prison Rape Elimination Act of 2003 (PREA) required that the DOJ and its subdivisions—the National Institute of Justice and BJS—study and report on the amount of sexual violence in adult and juvenile prisons and jails. In reaction to this reporting and court cases indicating that LGBTQ+ inmates were particularly vulnerable to sexual abuse by inmates and staff and after studying the matter, the National Prison Rape Elimination Commission, which was created by PREA legislation, released its national standards in June 2009. These standards are extensive and require that states train staff differently, monitor inmates differently, report offenses, treat victims and offenders, audit themselves, and collect and keep relevant data related to sexual violence. The U.S. attorney general was asked to release these standards and require that the Bureau of Prisons and each governor certify compliance with these standards or certify that they were working toward compliance. If governors did not do this, they risked losing 5% of any future DOJ grants (U.S. Department of Justice, 2015). As the date for certification of compliance neared in spring 2014, the governors of at least seven states (Arizona, Florida, Idaho,

Indiana, Nebraska, Texas, Utah, and the Northern Marianas Islands territory) ignored the certification deadline of May 15 or indicated that they would not certify compliance with these standards, some claiming that they were too cumbersome and expensive to comply with (Reilly, 2014, p. 1). On the other hand, a few states, including New Hampshire and New Jersey, certified compliance, while 46 states or territories promised to use their grant monies from the DOJ to work toward compliance with the federal standards (Reilly, 2014, p. 1). By spring 2016, most states had certified or had promised to move toward compliance.

#### Discussion Questions

1. What benefits would flow from certification by states for jail inmates?
2. How might non-LGBTQ+ inmates benefit from certification?
3. Why would states be reluctant to promise certification, and how might that reluctance be overcome?

## Innovations in Jails

**LO 5.6** Explain the kinds of innovations happening in jails and how they are working out.

### New-Generation, or Podular, Direct Supervision Jails

In the 1980s, a new kind of jail was under construction in the United States, then called a new-generation jail and now known as a podular direct supervision (PDS)



jail. **New-generation, or podular, direct supervision jails**, have two key components: a rounded, or *podular*, architecture for living units and the *direct*, as opposed to indirect or intermittent, supervision of inmates by staff; in other words, staff were to be in the living units full time (Applegate & Paoline, 2007; Jay Farbstein & Associates, 1989; Gettinger, 1984; Zupan, 1991). It was believed that the architecture would complement the ability to supervise, and the presence of staff in the living unit would negate the ability of inmates to control those units. Other important facets of these jails are the provision of more goods and services in the living unit (e.g., access to telephones, visiting booths, recreation, and library books) and the more enriched leadership and communication roles for staff.

Not surprisingly, several scholars recognized that the role of the correctional officer in a podular direct supervision jail would have to change. Zupan (1991), building on the work of Gettinger (1984), identified seven critical dimensions of new-generation jail officer behavior: (a) having proactive leadership and conflict resolution skills, (b) building a respectful relationship with inmates, (c) having uniform and predictable enforcement of all rules, (d) actively observing all inmate doings and occurrences in the living unit, (e) attending to inmate requests with respect and dignity, (f) disciplining inmates in a fair and consistent manner, and (g) being organized and in the open with the supervisory style. Whether officers in podular direct supervision jails are always adequately selected and trained to fit these dimensions of their role is, as yet, an open research question (Applegate & Paoline, 2007; Nelson & Davis, 1995; Wener, 2006).

New-generation jails, though hardly “new” anymore, had become popular in the United States by the late 1980s and through the 1990s (Kerle, 2011; Wener, 2005). Reportedly, in the 21st century, about one fifth of medium and larger jails are said to be new-generation facilities (Tartaro, 2002). Their architecture, though not all features of such jails, can be seen in most new jails and prisons built these days, whether or not they include direct supervision. It is widely acknowledged by correctional scholars and practitioners that though podular direct supervision jails or prisons are not necessarily a panacea for all that ails corrections today (e.g., crowding and few resources), they often do represent a significant improvement over more traditional jails (Kerle, 2003; Perroncello, 2002; Zupan, 1991). If operated correctly and including all of the most important elements, they are believed to be less costly in the long run (because of fewer lawsuits), be safer for both staff and inmates, provide a more developed and enriched role for staff, and include more amenities for inmates. This is a big if, however, and some research has called these claims of a better environment for inmates and staff and a more enriched role for staff into question, as the implementation of the new generation model has sometimes faltered or been incomplete in many facilities (Applegate & Paoline, 2007; Stohr, Lovrich, & Wilson, 1994; Tartaro, 2002, 2006). Clearly, more research on new-generation jails is called for to determine their success (or failure) in revolutionizing the jail environment for staff and inmates.

### Community Jails

Another promising innovation in jails has been the development of **community jails** (Barlow, Hight, & Hight, 2006; Kerle, 2003, 2011; Lightfoot, Zupan, & Stohr, 1991). Community jails are devised so that programming provided on the outside does

**New-generation, or podular, direct supervision jails:** Jails that have two key components: a rounded, or podular, architecture for living units and the direct supervision of inmates by staff.

**Community jails:** Organized so those inmates engaged in educational programs, drug or alcohol counseling, or mental health programming in the community will seamlessly receive such services while incarcerated and again as they transition out of the facility.



**Photo 5.6** A female correctional officer operates a new-generation jail control pod.

Courtesy of Bergen County Sheriff's Office/Bergen County Jail

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a professor at a university, and you do research on jails. Some of your early research was on new-generation, or podular direct supervision (PDS) jails. One of the jails you profiled in that early research was a model PDS jail in that it practiced all of the principles of the best of such jails. You happen to visit that jail more than 20 years later, and other than the physical podular architecture, there is no longer anything new or progressive about the jail; there is no evidence that it is a PDS jail anymore. In fact, the supervision practices now seem to you to be abusive. Staff are no longer in the living units 24/7, and inmates are locked up in their double- and sometimes triple-celled small cells (made for one) for up to 23 hours a day. Staff are not trained in how to be leaders in their living units, as they are

rarely in them, and inmates are not out of their cells to be led; instead, staff contact with inmates often includes yelling through the steel cell doors or the slight contact staff have with inmates when let out for their 1 hour of exercise. Inmates no longer have the support or services that typified PDS jails—and this jail—in the past. You are aware that fully 50% to 60% of the inmates in this jail have not been convicted of crimes, yet they are treated like they are serious offenders with behavior problems in a supermaximum security prison. You know how this jail used to be operated, you know how it should be operated, and you know it is not being operated in this way. What would you do, and why? Whom might you talk to? What do you think would be the likely consequences of the action(s) you choose?

not end at the jailhouse door, as the needs such programming was addressing have not gone away and will still be there when the inmate transitions back into the community. Therefore, in a community jail, those engaged in education, drug or alcohol counseling, or mental health programming will seamlessly receive such services while incarcerated and again as they transition out of the facility (Barlow et al., 2006; Bookman, Lightfoot, & Scott, 2005; National Institute of Corrections, 2008). Whether one is in and out of the facility within a few days or a few months, needs are met and services provided so the reintegration into the community is smoother for the inmate and the community in question.

Managers of community jails also recognize they cannot staff or resource the jails sufficiently to address every need of their inmates. Rather, community experts who are regularly engaged in the provision of such services are the appropriate persons to provide them, whether the inmate is in a jail or free in the community; in both instances, it is argued, they are a community member and entitled to such services (Barlow et al., 2006; Lightfoot et al., 1991).

Obviously, the development of community jails requires that some resources (particularly space) be devoted to the accommodation of community experts who provide for inmates' needs. Unfortunately, it is the rare jail that has the luxury of excess space for allocation to such programming. Therefore, the solution may lie in the inclusion of such space in jail architectural plans, though this certainly is not optimal given the immediacy of inmate needs discussed in the foregoing section.

The second problem that faces jail managers interested in creating community jails is convincing local service providers—and lawmakers, if need be—that people in jails have a right to and a continued need for services and that the continued provision of such services by community experts benefits both those inmates and the larger community. Needless to say, making this case, as reasonable as it might sound, can be a hard sell to those social service agencies that already have scarce resources and to policymakers concerned that more tax dollars might be required to fund such resource provision in jails. For these reasons, larger jails and communities, with their economies of scale and a greater proportion of their

populations in need of social services, might be better situated to operate community jails and thus achieve their purported benefits of less crime from the continuous provision of services in jails (Kerle, 2011; Lightfoot et al., 1991).

One interesting development on this front concerns how the ACA is implemented in jails. The ACA does not expressly prohibit jail inmates, as long as they are not convicted, from being able to sign up for Medicaid or qualified health plans while they are in jail. What this means is that a jail can embrace this community function by ensuring that its inmates are signed up. Evidence indicates that mentally impaired inmates with Medicaid coverage who reentered communities from jails were more likely to have a smooth transition to needed care than those who were not so covered (Robertson, 2014).

## Coequal Staffing

Another promising innovation in jails that has occurred in the past couple of decades in some sheriffs' departments has been the development of **coequal staffing**, which provides comparable pay and benefits to those who work in the jail with those who work on the streets as law enforcement (Kerle, 2003, 2011). Historically, jails have been a dumping ground (to use Irwin's [1985] terminology) for inmates *and* for staff. If a sheriff deemed that a staff person could not "make it" on the streets in law enforcement, they were given a job in the jail, where the individual's lack of skills and ability was not seen as a problem. Moreover, jail staff were (and often still are) paid less and received less training than their counterparts working on the streets (Stohr & Collins, 2014). As a result, jails do find it difficult to attract and keep the best personnel, or even if they can attract the more talented applicants, jail jobs were and are used as "stepping stones" to better paying and higher status jobs on the law enforcement side of sheriffs' agencies (Kerle, 2011).

Since the 1980s, however, many sheriffs' departments, though far from a majority, have recognized the problems created by according this second-tier status to those who work in jails (Kerle, 2011). Consequently, they have instituted programs whereby staff who work in the jails, who often are given deputy status, are trained and paid similarly to those who work in the free communities. Some anecdotal evidence from sheriffs' departments indicates that this change has had a phenomenal effect on the professional operation of jails (as they are better staffed) and on the morale of those who labor in them (Kerle, 2011).

**Coequal staffing:** Programs that provide comparable pay and benefits for those who work in the jail with that of people who work on the streets as law enforcement in sheriffs' departments.

## Reentry Programs for Jails

A recent innovation proposed for jails these days (and prisons, too) is a rethinking about how to keep people out of them. (Reentry will be discussed in greater detail in Chapter 9.) Rather than focusing on deterrence or incapacitation so much (as in the 1980s and 1990s), jail practitioners are studying how to make the transition from jails to the community smoother and more successful so people do not commit more crime and return (Bookman et al., 2005; Freudenberg, 2006; McLean, Robarge, & Sherman, 2006; Osher, 2007). Research by Wodahl, Boman, and Garland (2015) would indicate that community sanctions for probation and parole violations can be as effective as the use of jail and, at the same time, cost much less, so there is additional impetus for communities to try to move their jail inmates back into the community or to restrict their placement in the jail in the first place.

As is indicated by the discussion in the foregoing material of all of the medical, psychological, and social—not to mention educational—deficits that many inmates of jails have, this transition back into the community is likely to be fraught with difficulties. That is why any successful **reentry** program must include a recognition of the problems individual inmates may have (e.g., mental illness, physical illness, joblessness, homelessness) and address them systematically in collaboration with the client and the community

**Reentry:** The process of integrating offenders back into the community after release from jail or prison.

(Freudenberg, 2006; McLean et al., 2006). In a study by Freudenberg, Mosely, Labriola, and Murrill (as cited in Freudenberg, 2006) conducted in New York City jails, the researchers asked hundreds of inmates what their top three priority reentry needs were. For adult women, they were housing, substance abuse treatment, and financial support; for adult men, they were employment, education, and housing; for male adolescents, they were employment, education, and financial support (Freudenberg, 2006, p. 15). Spjeldnes, Jung, and Yamatani (2014) also argued that women's and men's reentry needs may differ; these researchers found, in their study of a large urban jail, that more women than men reported chemical dependency and mental health needs and that the women were more likely to value treatment programming.

Effective interventions to improve reentry, in the New York study, included everything from referral to counseling to drug treatment to postrelease supervision, depending on the needs of the inmate, their unique reentry situation, and the services available in the community. Clearly, reentry is a complex process for people with multiple problems, and it requires that jail personnel prioritize the needs they will target and the interventions they will apply and then network with community agencies to provide the package of services most likely to further the goal of successful reentry (Freudenberg, 2006; McLean et al., 2006). In fact, Bookman and her colleagues (2005) would argue that jail personnel should expect to engage in collaborative arrangements with community agencies (sounds a bit like community jails, doesn't it?) if they hope to succeed in the reentry process.

### Release on Recognizance and Bail Programs for Jails

Release on recognizance, or ROR, and no or little bail programs are other ideas gaining currency these days in jails. Neither are new, and some might say they date at least to the founding of the country and the Eighth Amendment to the Constitution, which requires that any bail set not be excessive. Since at least the 1980s some scholars have argued that low-level offenders and those who are not likely to abscond be allowed to be released into the community without bail, as the vast majority of them will appear for court (ROR programs; e.g., see Feeley, 1983). More recently people have accused the criminal justice system, and courts and jails in particular, with incarcerating people because, in essence, they are too poor to pay bail or fines associated with their crimes. They allege that we have returned to the era of the "poor" house in our use of jails. Critics also charge that incarcerating people in jails who by virtue of their alleged crimes and records in the community do not pose a threat to that community is short sighted, as it is costly to do so (a night in jail can cost the taxpayer anywhere from \$75 to \$150), and wreaks havoc on people's lives, as it can lead to the loss of jobs as well as disruption of families and connection with those in the community who can best support them. Initiatives such as the Bail Project (<https://bailproject.org>), which operates in only select cities, pay bail for low-level inmates without the funds, and when the individuals appear in court the refunded money is used for others. The Vera Institute of Justice, long an advocate for ROR and no or low bail reform, notes that as a country we spend more than \$22 billion annually to house people in jails and that at least one third to one half of those people don't need to be there, as they do not pose a threat to the community. They ask the following: "What if judges set bail amounts people could afford, or released them with no up-front payment? Bail shouldn't function as punishment or coerce people to plead guilty, but these and other injustices are baked into the process" (Vera Institute of Justice, 2019, p. 1).



## SUMMARY

**LO 5.1** Identify the origins of jails and types of jails in operation.

- Jails house the accused, the guilty, and the sentenced as well as low-level offenders and the serious and violent ones. As with prisons, their mission is to incapacitate (even the untried), to deter, to punish, and even to rehabilitate or reintegrate. The degree to which they accomplish any of these goals is, in large part, determined by the political and social climate the jail is nested in.

**LO 5.2** Explain how jails process individuals.

- Processing individuals begins with delivery to the facility. An assessment is made of the physical condition and needs of the arrestee. Law enforcement completes admittance paperwork. The jail will then accept, search, and complete their own paperwork. The arrestee is permitted to contact help and will either be released or detained until further action is taken.

**LO 5.3** Assess how jails affect and are affected by overcrowding, race, gender, age, and special needs of their inmates.

- Jails in the United States are faced with any number of seemingly intractable problems. Sections of them are often overcrowded—or close to it—and house some of the most debilitated and vulnerable persons in our communities.
- Jails have also served as a dumping ground for those who are marginally criminal and are unable or unwilling to access social services. Too often, the needs of such persons go unaddressed in communities, and as a result, these unresolved needs either contribute to their incarceration (in the case of substance abuse and mental illness) or make it likely (such as in the case of homelessness) that they will enter and reenter the revolving jailhouse door.

**LO 5.4** Describe the various approaches jails take to address medical problems of inmates.

- Medical problems need to be addressed pursuant to the demographic of the inmates. Older inmates have more needs than the younger populations. Women tend to be more likely to report medical problems. Substance abuse issues may also need to be addressed within the populations. All inmates have the right to medical care.

**LO 5.5** Discuss how jails manage sexual violence, gangs, and suicides.

- Sexual violence in jails remains problematic. It is likely true that the rate of violence between inmates and inmates or between staff and inmates has gone down in recent years. However, increased monitoring of this phenomenon is certainly called for and may serve to further reduce violence through the implementation of violence reduction techniques and training for staff. To that end, the implementation of PREA, with its reporting requirement for correctional institutions, represents a positive move.
- Corrections staff also need to be trained to monitor for gang activity as well as suicidal ideations and tendencies while inmates are in the facility.

**LO 5.6** Explain the kinds of innovations happening in jails and how they are working out.

- Thankfully, there have been some other hopeful developments on the correctional horizon. Architectural and managerial solutions have been applied to jails in the form of new-generation jails and coequal pay for staff in sheriffs' departments, and some jails have even experimented with community engagement, along with bail and ROR innovations, to ensure that the needs of people in communities are not neglected when such folks enter jails or reenter communities.

## KEY TERMS

Coequal staffing 133  
Community jails 131  
Jails 108

New-generation, or podular, direct  
supervision jails 131  
Overcrowding 110

Prison Rape Elimination Act of 2003  
(PREA) 128  
Reentry 133



## DISCUSSION QUESTIONS

1. Why are jails the dumping ground for so many people in our communities? What are the consequences of this social policy?
2. What is the best use for a jail? What factors might make it difficult to operate jails so that they are able to focus on this best use?
3. What do you think are the best practices (most effective) in managing medically challenged or potentially suicidal inmates?
4. How can jail managers best reduce or eliminate sexual violence against inmates in jails? What do you think keeps managers from being successful at eliminating such violence?
5. What factors are likely to compromise the ability of podular direct supervision jails to achieve their promise?
6. Why are jail staff in most facilities and sheriffs' departments still paid less than those on patrol? What argument can be made for the same or even higher pay for jail staff?
7. What are the relative advantages and disadvantages of community jails?
8. How might reentry programs prevent recidivism?







Pat Sutphin/The Times-News via AP

# 6

## Community Corrections

### Probation and Intermediary Sanctions

#### TEST YOUR KNOWLEDGE

Test your current knowledge of probation by answering the following questions as true or false. Check your answers on page 386 after reading the chapter.

1. Probation in the United States began during the 1800s and was run by volunteers.
2. Probation is a popular punishment option among the American public.
3. Parole is another name for probation.
4. Probation is the most frequent sentence imposed by the courts in the United States.
5. Tough law enforcement-type probation officers achieve better results from their probationers than social work-type officers.
6. Work release programs are programs that allow tighter control of probationers than regular probation while allowing them to maintain their employment.
7. Hardened criminals would rather have any form of community supervision than a prison sentence.
8. Boot camps where offenders are treated with strict discipline are quite successful, especially with young offenders.

#### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 6.1 Explain the origins and purpose of probation.
- 6.2 Describe the demographics and characteristics of offenders on probation.
- 6.3 Describe the advantages of probation over incarceration for some offenders and for community offenders.
- 6.4 Analyze the probation officer role and models of probation supervision.
- 6.5 Explain the purpose of graduated sanctions for technical violations of probation.
- 6.6 Identify sources of stress commonly encountered related to the job duties of a probation officer.
- 6.7 Describe the benefits of engaging the community in offender rehabilitation.
- 6.8 Identify the various intermediate community sanctions and what they have to offer.

#### PTSD AND ESTABLISHING A VETERANS COURT IN BOISE, IDAHO

On July 28, 2009, a woman in Boise, Idaho, frantically dialed 911, saying that someone with a gun was pounding on her door and that he had fired one round at the lock. When the police arrived, they were confronted with a man holding a gun in a stairwell and fired 12 rounds at him without hitting him. The man surrendered without firing a shot and was charged with six felony counts. The man was 38-year-old sergeant George Nickel, a decorated (Bronze Star and Purple Heart) Iraq War hero who in 2007 suffered severe wounds in a bomb blast that killed three of his fellow soldiers. He told police he hadn't slept for 3 days and had drunk close to a full case of beer that day. He also told them he was out looking for his dog, which he believed had been stolen, and was angrily trying to get it back.

(Continued)

(Continued)

Nickel suffered from posttraumatic stress disorder (PTSD) and “survival guilt” for surviving the blast in Iraq. He must have thought while in his jail cell that for all intents and purposes his life was over. However, under a plea agreement he was allowed to admit to one count of firing a weapon into an occupied residence and had the judgment withheld. A withheld judgment means that the charge would be purged from his record if he received mental health treatment and cooperated with law enforcement, which he did. Cooperation with law enforcement included sharing his harrowing experiences on videotape, which has been distributed to law enforcement agencies across the United States for training purposes.

Nickel's case was instrumental in the idea of establishing a veterans court for Idaho, whereby people like Nickel can remain in the community with proper supervision rather than being sent to prison. Nickel subsequently earned a degree in social work from Boise State University and now works with other veterans to try to resolve their problems. Had it not been for the humane intervention of people like former Boise police chief Mike Masterson and Judge Deborah Bail, Nickel might have received up to 15 years in prison and still be left with his problems instead of becoming the upstanding citizen he now is. This is the kind of success story all special problem-solving courts can claim—lives saved and turned around by considering the problem behind the act(s) that bring troubled individuals before them. Such problem-solving courts have been one of the very few success stories in American corrections.

## Introduction: The Origins of Probation

### LO 6.1 Explain the origins and purpose of probation.

**Probation:** A sentence imposed on convicted offenders that allows them to remain in the community under the supervision of a probation officer instead of being sent to prison.

This chapter focuses on **probation**, which is a sentence imposed on convicted offenders that allows them to remain in the community under the supervision of a probation officer instead of being sent to prison. The term *probation* comes from the Latin term *probare*, meaning “to prove.” Because probation is a conditional release into the community, the probation period is a time of testing a person's character and their ability to meet certain requirements mandated by the court. That is, convicted persons must prove to the court that they are capable of remaining in the community and living up to its legal and moral standards. About 90% of all sentences handed down by the courts in the United States are probation orders (Kramer & Ulmer, 2009).

The practice of imprisoning convicted criminals is a relatively modern and expensive way of dealing with them. Up to 200 or 300 years ago, they were dealt with by execution, corporal punishments such as disfigurement and branding, or humiliation in the stocks. All these punishments took place as community spectacles and even with community participation in the case of individuals sentenced to time in the stocks. Assuming that a convicted person was not executed, they remained in the community enduring the shame of having offended it (think of Hester Prynne's punishment in Hawthorne's [1850/2003] *The Scarlet Letter*, briefly discussed in Chapter 1). The only kinds of offenders typically subjected to this kind of shaming today are sex offenders, whose pictures are displayed on the Internet and who are frequently identified to their neighbors through community notification orders.

More enlightened ages saw punishments move away from barbaric cruelties and the emergence of the penitentiary, where offenders could contemplate the errors of their ways and perhaps redeem themselves while residing there. But as we have seen, penitentiaries were not very nice places, and some kind souls in positions to do so sought ways to spare deserving or redeemable offenders from being consigned to them. This practice had its legal underpinnings in the practice of **judicial reprieve** sometimes practiced in English courts in former times. A judicial reprieve was a delay in sentencing following a conviction, a delay that most often would become permanent if the offender demonstrated good behavior. In those days,

**Judicial reprieve:** British and early American practice of delaying sentencing following a conviction that could become permanent, depending on the offender's behavior.



there were no probation officers charged with supervising reprieved individuals; the nosy and judgmental nature of the small communities was more than adequate for that task.

Early American courts also used judicial reprieve, whereby a judge would suspend the sentence and the defendant would be released on their own recognizance. Today an “own recognizance” release is the release of an arrested person without payment of bail who promises to appear in court to answer criminal charges. In early America, it was granted to persons already convicted as a form of probation, although offenders received no formal supervision or assistance to help them mend their ways. The first real probation system in which a reprieved person was supervised and helped was developed in the United States during the 1840s by a Boston cobbler named John Augustus. Augustus would appear in court and offer to take carefully selected offenders into his own home, where he would do what he could to reform them as an alternative to imprisonment. Probation soon became his full-time vocation, and he recruited other civic-minded volunteers to help him. By the time of his death in 1859, he and his volunteers had saved more than 2,000 convicts from imprisonment (Schmallegger, 2001). It should be noted, however, that Augustus worked only with first offenders and excluded the “wholly depraved” (Vanstone, 2004, p. 41), a luxury modern probation officers do not enjoy.

In 1878, the Massachusetts legislature authorized Boston to hire salaried probation officers to do the work of Augustus’s volunteers, and a number of states quickly followed suit. This legislation grew out of the need to enforce the conditions of a suspended sentence as well as the need to help offenders change their lives (Vanstone, 2008). However, the probation idea nearly died in 1916 when the U.S. Supreme Court ruled that judges may not indefinitely suspend a sentence (*Ex Parte United States*, 1916). In this case, an embezzler was sentenced to 5 years of imprisonment, which the judge (federal judge John Killits) suspended contingent on the embezzler’s good behavior. What Killits had done was place an offender on probation without there being such a system established by law. Probation was such a popular idea with legislators at this time, however, that this ruling led to the passage of the **National Probation Act of 1925**, allowing judges to suspend sentences and place convicted individuals on probation if they found circumstances warranted it.

**National Probation Act of 1925:** The act that initiated the legal use of probation in the United States.

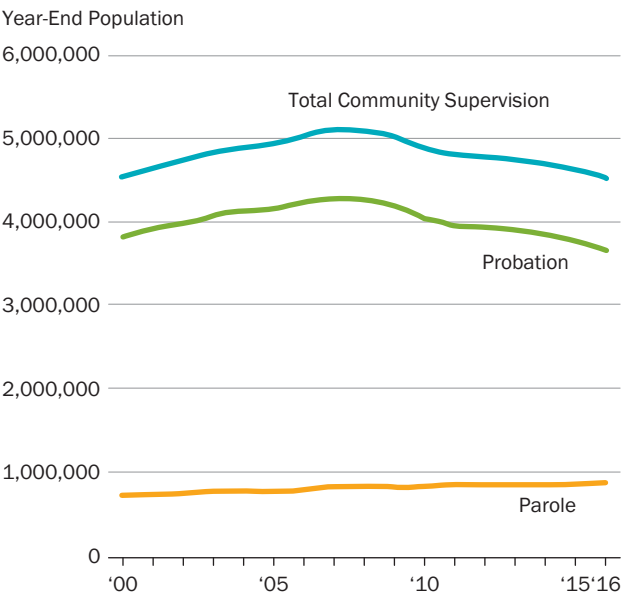
## Number and Demographic Characteristics of Offenders on Probation

### LO 6.2 Describe the demographics and characteristics of offenders on probation.

According to the Bureau of Justice Statistics, there were 4,537,100 adult Americans (1 in 55 adults in the United States) under community supervision at the end of 2016 (Kaeble, 2018). This figure is a decrease of 1.1% from the previous year. Figure 6.1 shows trends in the number of entries into the federal and state probation systems from 2000 to 2016. In 2016, there were 2,012,200 entries and 2,043,200 exits from probation. Of those who exited, 50.8% did so successfully (84.2% of federal probationers and 50.2% of state probationers). Across both federal and state systems, 12.1% were incarcerated, 2.5% absconded, 0.62% were “discharged to warrant or detainer,” and 13.6% exited “other unsatisfactory” (terminated for such things as failure to meet certain conditions, such as fines and restitution, by the end of their probation period). The remainder died, were deported, or were transferred to other agencies. Men constituted about 75% of the adult probation population. White people made up 55% of adult probationers; 28% were Black; 14% were Hispanic; and 2% were American Indian, Alaska Native, Asian, or Pacific Islander. Figure 6.1 provides more information about the probation and parole population in 2016. Note that probation numbers have decreased substantially since 2008, whereas the number of people on parole has increased slightly (Kaeble, 2018). Figure 6.2 provides information about the characteristics of individuals on probation from the Bureau of Justice Statistics (Kaeble, 2018).

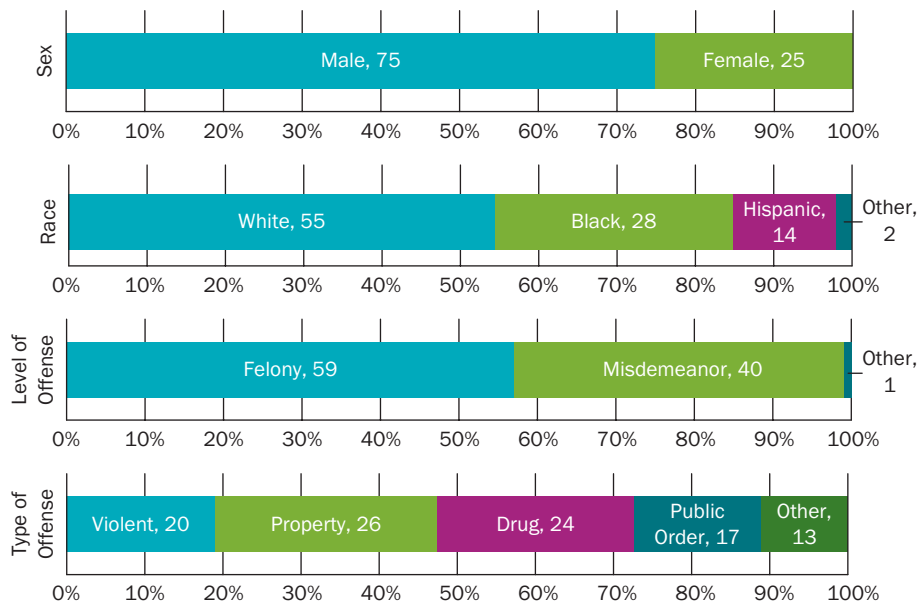
■ **FIGURE 6.1** Adults Under Community Supervision (Probation or Parole), 2000–2016

Source: Kaeble (2018). Most recent data available.



■ **FIGURE 6.2** Characteristics of Individuals on Probation

Source: Based on data from Kaeble (2018).



## Why Do We Need Community Corrections?

**LO 6.3** Describe the advantages of probation over incarceration for some offenders and for community offenders.

**Community corrections** may be defined as any activity performed by agents of the state to assist offenders in establishing or reestablishing law-abiding roles in the community while at the same time monitoring their behavior for criminal activity. In theory, monitoring and assisting offenders while allowing them to remain in the community protects society from criminal predation without taxpayers shouldering the financial cost of incarceration. Even if as a society we were willing and able to bear the monetary cost of imprisoning all offenders, incarceration imposes other costs on the community. These costs can and must be borne where seriously violent and chronic criminals are concerned, but to send every felony offender to prison would be counterproductive. Yet the general public is not well disposed to the idea of probation because “it suffers from a ‘soft on crime’ image” and is seen as “permissive, uncaring about crime victims, and blindly advocating a rehabilitative ideal while ignoring the reality of violent, predatory criminals” (Petersilia, 1998, p. 30). However, allowing relatively minor felony offenders to remain in the community under probation supervision to prove they can live law-abiding lives benefits their communities as well as themselves.

The general public’s notion that a probation sentence is “getting away with it” is a notion not shared by many offenders. When a convicted felon is placed on probation, they actually receives a prison sentence. This prison sentence is then suspended during the period of proving that the probationer is capable of living a law-abiding life. This sentence hangs over probationers’ heads like a guillotine ready to drop if they fail to provide that proof. It may be for this reason that a number of studies have found that “experienced” offenders who have done prison time, probation time, and parole time often prefer prison to the more demanding forms of probation such as day reporting and intensive supervision probation (Crouch, 1993; May, Wood, Mooney, & Minor, 2005). Probation requires offenders to work, submit to treatment and educational programs, and do many other orderly things that many hardened criminals simply do not have the inclination to do. Numerous interviews with active “street criminals” (e.g., burglars, robbers, carjackers) show that such things are treated with disdain by them (Jacobs & Wright, 1999; Mawby, 2001; Wright & Decker, 1994). Serving time in prison is less of a hassle for many of them, and many know they would end up there anyway because they would not live up to probation conditions (May et al., 2005).

Other less criminally involved offenders prefer a probation sentence so that they can retain their jobs and maintain connections to their families and communities. As we saw in Chapter 1, perceptions of the severity of a punishment, and thus its deterrent effect, are a function of the contrast between one’s everyday life and life under punishment conditions (the contrast effect). With close to 4 million American adults on probation in 2012, 68% of them successfully completed their conditions of supervision and were released from probation (Maruschak & Bonczar, 2013), and that is fairly consistent from year to year. In the event of a failure to live up to the conditions of probation, the prison sentence may be imposed. Thus, while many fail the probation period, the majority succeed, so surely providing nonviolent offenders with the opportunity to try to redeem themselves

### **Community corrections:**

A branch of corrections defined as any activity performed by agents of the state to assist offenders in reestablishing functional law-abiding roles in the community while at the same time monitoring their behavior for criminal activity.

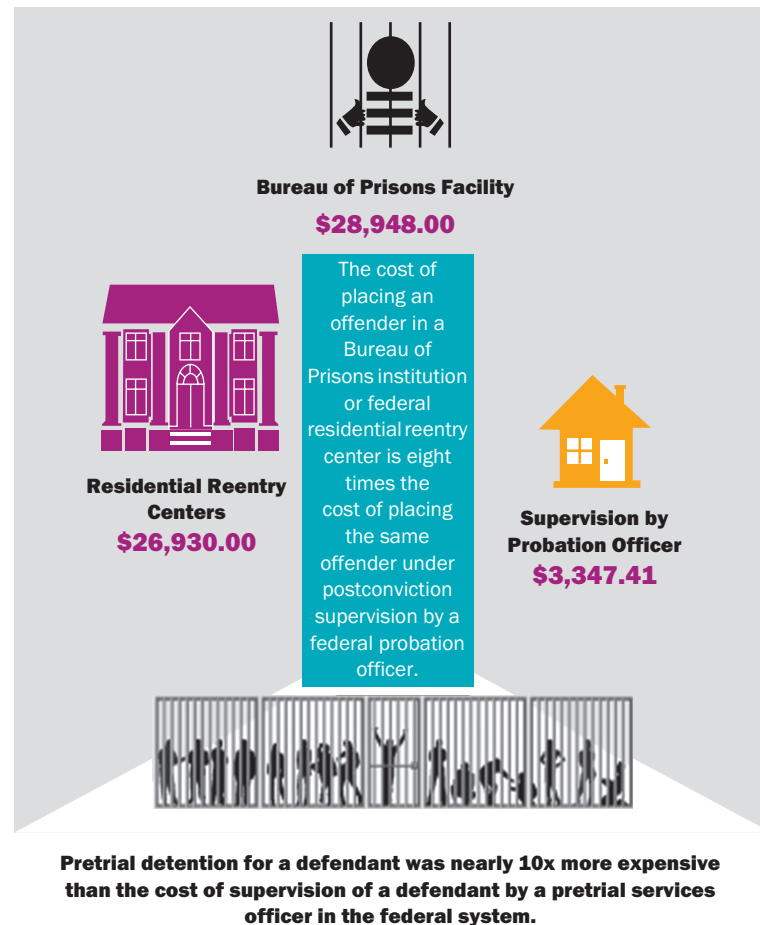
while remaining in the community is sensible criminal justice policy. But what are the benefits for the community?

1. Probation costs far less than imprisonment. Note from Figure 6.3, provided by the U.S. Courts (2013), that it cost nearly 9 times more (more for women, juveniles, and older people) for imprisonment than for community supervision. For each person placed on probation rather than incarcerated in 2012, taxpayers saved more than \$25,000, and these savings apply every year. Many jurisdictions require probationers to pay for their own costs of supervision, which means that taxpayers pay nothing. However, while economic considerations are important for policymakers, they are not the primary concern of corrections; protecting the community is. Community-based corrections is the solution only for those offenders who do not pose a significant risk to public safety.
2. Employed probationers stay in their communities and continue to pay taxes, and offenders who were unemployed at the time of conviction may obtain training and help in finding jobs. This adds further to the tax revenues of the community and, more important, allows offenders to keep or obtain the stake in the community that employment offers. A job also gives them the wherewithal to pay fines and court costs, as well as restitution to victims.
3. In the case of married offenders, community supervision maintains the integrity of the family, whereas incarceration could lead to its disruption and all the negative consequences such disruption entails.
4. Probation prevents felons from becoming further embedded in a criminal lifestyle by being exposed to chronic offenders in prison. Nearly all prisoners will leave the institution someday, and many will emerge harder, more criminally sophisticated, and more bitter than they were when they entered. Furthermore, they are now ex-cons, a label that is a heavy liability when attempting to reintegrate into a free society.
5. Many more offenders get into trouble because of deficiencies than because of pathologies. Deficits such as a lack of education, a substance abuse problem, and faulty thinking patterns can be assessed and addressed using the methods discussed in Chapter 14 on treatment. If we can correct these deficits to some extent, then the community benefits because it is a self-evident truth that whatever helps the offender to become a productive citizen also protects the community.

We do not wish to appear naive about this; there are people who are unfit to remain in the community and could not lead a law-abiding life even if given everything they needed to start over. We noted in Chapter 1 that for serious and violent offenders, incarceration is cost effective. Placing dangerous offenders on probation is putting the community at risk, and they will mess up sooner or later and end up in prison anyway. For instance, according to the U.S. Marshals Service (2012), about 95% of those in the witness protection program (a program run by the Marshals Service to protect threatened witnesses and “snitches” during and after a trial) are criminals, and 17% commit further crimes under their new identities within a year despite being given jobs, housing, and basically a new start in life as part of the program. To use a medical metaphor, probation is “outpatient” treatment for the less seriously criminally afflicted; prison is hospitalization for people who cannot be successfully treated anywhere else.

■ **FIGURE 6.3** Community Supervision Costs Versus Incarceration Costs

Source: U.S. Courts (2013).



## The Probation Officer Role and Models of Probation Supervision

### LO 6.4 Analyze the probation officer role and models of probation supervision.

Probation and parole officers (the roles are combined in some states) have two common roles: to protect the community and to assist their probationers and parolees in becoming productive and law-abiding citizens. The dual roles mark them as law enforcement officers (this is their legally defined role in most states) and as social workers. The offenders they supervise may be on probation or parole, depending on their legal status. Probation is a judicial function, meaning that offenders are under the ultimate supervision of the court. Probationers may or may not have served jail time prior to community supervision by a probation officer. Offenders who have served time in prison are placed on parole on release and are under the ultimate supervision of the executive branch of government, typically the state department of corrections.



Probation officers are officers of the court, and in this capacity they are responsible for enforcing court orders, which may require them to monitor probationers' adherence to programs such as drug and alcohol treatment and to develop plans to assist them in transitioning to a free society. They are also required to make arrests, perform searches, and seize evidence of wrongdoing. Officers might need to appear in court occasionally to present evidence of and violation of probation orders and to justify their recommendations for either termination of probation and imprisonment or continued probation with additional conditions. This is part of the officers' law enforcement role. Probation and parole officers work with offenders who may be dangerous and who may live in dangerous areas, which is why 35 states require their officers to carry firearms (Holcomb, 2008). Dangerous or not, it is important that officers spend a lot of time in those communities learning about their culture, customs and values, and resources available to assist with the rehabilitation of offenders.



## Perspective From a Practitioner

**BRIAN FALLOCK, PROBATION AND PAROLE OFFICER**

**Position:** Probation and parole agent

**Location:** Pennsylvania Board of Probation and Parole

**Education:** BA in administration of justice, University of Pittsburgh

### What are your duties and responsibilities?

The primary responsibility of a probation and parole (P&P) agent is to ensure the safety of the community by supervising offenders on parole and probation released from state correctional institutions or county jails. While doing this, P&P agents also will assist offenders in adequately reentering society through numerous techniques and programs to hopefully reduce recidivism and provide the offenders with the tools they need to stay out of jail. Agents refer offenders to outside agencies for specialized therapy to assist them in dealing with problems that need special attention, such as employment, drugs, alcohol, and sexual and mental health problems. If an offender does violate, agents are responsible for requesting a warrant for his or her arrest through a superior and physically taking an offender into custody with the assistance of other agents or police agencies. P&P agents also participate in court proceedings, providing testimony on the adjustment of offenders in the community and answering questions concerning agency policy and procedures so the court can make an accurate decision pertaining to an offender that has violated his or her supervision.

### What are the characteristics and traits most useful in your line of work?

Strong interpersonal skills are recommended, as you will be dealing with many offenders from different backgrounds as well as the offenders' families on a daily basis. Agents routinely work with various local and state law enforcement agencies, and being able to work with others to come to a common goal is encouraged. Good time management and organizational skills are a must, as you will consistently have numerous issues to deal with simultaneously and will need to be able to keep track of them. Communication and writing skills are also required, as there are various reports and notes that will need to be submitted on a regular basis.

### Please describe your typical workday.

As a field agent, I am required to make field contacts with offenders, whether at their homes, jobs, or elsewhere. Every offender is assigned a level of supervision that dictates policy regarding how often you are required to see that offender in a given supervision period. A typical workday will involve traveling through your assigned area of supervision, making attempts to see your offenders and their families to monitor their adjustment back into society. Agents will also communicate with various treatment agencies to ensure offenders' compliance with the programs they are enrolled in. If scheduled, agents will attend various court hearings to provide testimony and evidence proving any violations and detailing an offender's history while under

supervision. When needed, agents will spend time in the district office writing reports, answering e-mails, and making phone calls.

**What is your advice to someone who wants to enter your field?**

Being a P&P agent can be challenging. P&P agents are often said to wear numerous hats, depending on the situation. One minute you could be wearing a “law enforcement hat” that will require you to violate offenders (determine that they have violated parole) or take them into custody. The next minute you could be wearing a “social worker hat,” referring offenders to other agencies to get any help they

need. To be successful in this type of work, you need to be flexible and hard working. But you also need to keep in mind that these offenders can be dangerous, and you need to be cautious and on your toes at all times. You cannot become complacent, as there is no such thing as a “routine contact.” Anything can happen, and you need to be prepared. But along with being challenging, being a P&P officer can be extremely rewarding. You will be able to provide guidance to offenders and give them the tools they need to be contributing members of society, and hopefully they will complete their supervision successfully. Reducing recidivism is key, and if an offender is willing to change, a P&P agent is on the front lines and can have a great effect on it.

## Models of Probation Supervision

As is the case with all occupations, the effectiveness of probation and parole officers’ performance ranges from dismal to outstanding. One of the biggest problems in probation and parole work is gaining the trust of probationers or parolees and developing rapport with them. Most officers are white and middle class, whereas many of their “clients” are people of color, and whereas most probationers and parolees are men, about half of probation officers are women (Walsh & Stohr, 2010). It is very difficult for both officers and probationers to overcome the class, race, and gender divide and for each to understand and appreciate where the other is “coming from.” Nevertheless, the job must be done as effectively as possible.

The measures of correctional effectiveness are how well the community is protected from the offenders on an officer’s caseload (law enforcement role) and how well the offenders are able to resolve their criminogenic problems and become decent, law-abiding citizens (social work role). There is often tension between these supposedly contradictory roles (Skeem & Manchak, 2008), although there need not be, as one chief probation officer referred to in this so-called conflict in a question-and-answer session:

When I’m asked at a meeting with probation officers, “Are we supposed to be cops or social workers?” I answered with another question—“How many of you are parents of teenagers?” I asked those who raised their hands, “Would you say you are a cop or social worker?” One of those that raised his hand said, “At different times, I was both.” Bingo! (Quoted in Klingele, 2013, p. 1030)

Some officers take on an exclusively law enforcement role and embrace working values emphasizing strict compliance with probation conditions and holding offenders strictly accountable. Other officers take on a counselor role, providing offenders with whatever is available in the community to bring about behavior change. The extent to which officers follow these different models depends not only on the personalities and training of the individual officers but also on the overall supervision model dictated by whether their department’s philosophy is punitive or rehabilitative, which in turn is dictated by the ideology of local politicians.

A third group of officers combine the two roles and follow a “hybrid” approach, meaning that they follow both the law enforcement and social work models when appropriate. Skeem

and Manchak (2008) viewed the law enforcer as authoritarian and the counselor as permissive but saw the hybrid officer as authoritative, the kind of parenting style that psychologists tell us the most effective parents adopt (Grusec & Hastings, 2007). Authoritarian officers are inflexible disciplinarians who require unquestioning compliance with their demands. Such a style often leads to hostility and rebelliousness among those to whom it is directed. On the flip side, permissive officers set few rules and are reluctant to enforce those that are set. This style often results in the perception among their probationers that the officer is a “pushover,” and it practically invites lack of respect and noncompliance.

Hybrids are authoritative officers who are firm enforcers but fair, knowing that boundaries must be set and consequences must be endured for venturing beyond them. They clearly describe those boundaries and the consequences for crossing them (the law enforcement role), but they also offer guidance and support to probationers (the social work role) so that they may be better able to stay within those boundaries.

How well do these different styles do with respect to the dual roles of community protection and offender rehabilitation? One study found that in terms of technical violations such as failure to comply with some condition of probation, 43% of probationers supervised by law enforcement–oriented officers, 5% of probationers supervised by treatment-oriented officers, and 13% of probationers supervised by hybrid officers received technical (Paparozzi & Gendreau, 2005). These findings are as expected; law enforcers do not tolerate any violations, counselors tolerate nearly every violation, and hybrids, like good and concerned parents, tolerate selectively. New criminal convictions are a better measure of supervision effectiveness than technical violations, however, because while technical violations are largely in the hands of officers, new criminal convictions are out of their hands. Offenders with treatment-oriented social work officers were convicted of new crimes at twice the rate (32% vs. 16%) of those supervised by law enforcement–oriented officers, while only 6% of offenders supervised by hybrid officers were convicted of new crimes.

Further evidence for the effectiveness of the authoritative hybrid model comes from the success of Hawaii’s Opportunity Probation With Enforcement (HOPE) program. According to the judge who initiated the program, it is based on the principles of effective parenting and on Beccaria’s notion that consequences for misbehavior will be swift, certain, and proportionate to the severity of the misbehavior (as cited in Alm, 2013). HOPE begins with a formal warning that *no* violation of probation conditions will be tolerated and that any violation will *immediately* result in a short jail stay. The program has been shown to be so remarkably successful (it is examined in greater detail in Chapter 14) that a number of states have implemented similar programs, such as Delaware’s Decide Your Time program (O’Connell, Visser, Martin, Parker, & Brent, 2011).

## Ethical Issue

WHAT WOULD YOU DO?

You are a probation and parole officer assigned to write a presentence investigation report on a burglary case that resulted in the loss of more than \$1,000 in property and in which the house was trashed. On reading the police report, you realize the house is that of a very close friend who was devastated by the experience. You realize you can slant the report

to put the offender in the worst possible light and recommend a stiff sentence for him, thereby exacting “revenge” for your friend. Would you do this, would you still try to be as objective as possible and write the report, or would you realize your bias, tell your supervisor the circumstances, and request the report be assigned to another officer?

## Probation Violations and Graduated Sanctions

### LO 6.5 Explain the purpose of graduated sanctions for technical violations of probation.

In these days of severe budget cuts and the concerns of cost-conscious politicians, there has been a tendency to turn to evidence-based research to see what can be done to reduce probation revocations (Klinge, 2013). After all, one of the advantages of probation is supposed to be saving the taxpayer money, and probation is hardly a cost cutter if it is simply a deferred incarceration. We have seen that 15% of probationers were ultimately incarcerated in 2012 (Maruschak & Bonczar, 2013), which amounts to nearly 600,000 individuals, and probation violators constitute about one third of all individuals admitted to prison each year (Klinge, 2013). Probation officers enjoy a certain amount of discretion as to whether to formally violate someone's probation and the reasons why they do so. A formal probation violation goes before the sentencing judge with a recommendation from the officer regarding whether the suspended prison sentence should be imposed.

One of the ways state legislatures and correctional departments have addressed the issue is by turning to actuarial assessment tools devised by criminal justice researchers to determine the circumstances for technical and, in some cases, minor criminal violations of probation. One such tool used by the Vermont Department of Corrections and presented in Table 6.1 is designed to eliminate costly court appearances and incarcerations for offenders whose violations do not bear directly on their threat to the community or their rehabilitation.

**TABLE 6.1** Graduated Sanctions Guideline for Technical Probation Violations

| LEVEL 1 VIOLATIONS  | LEVEL 1 SANCTIONS                                |
|---|--|
| ➤ Failure to report as instructed                           | ➤ Graduated sanction thinking report             |
| ➤ Out of place  | ➤ Apology (verbal or written)                    |
| ➤ First positive drug/alcohol test                          | ➤ Verbal warning                                 |
| ➤ Refusal of drug/alcohol test                              | ➤ Develop relapse prevention plan                |
| ➤ Missed treatment/programming group                        | ➤ Written essay/educational activities           |
| ➤ Unemployment or failure to seek employment within 45 days | ➤ Increase contacts for up to 30 days            |
| ➤ Failure to fulfill financial obligations                  | ➤ Increase curfew restrictions for up to 30 days |
| ➤ Failure to follow case plan/ORP                           | ➤ Use of schedules for up to 30 days             |
| ➤ Failure to complete community service                     | ➤ DOC work crew                                  |
| ➤ Curfew violation  |  |
| LEVEL 2 VIOLATIONS  | LEVEL 2 SANCTIONS                                |
| ➤ Multiple Level 1 violations                               | ➤ Referral for treatment assessment              |
| ➤ Noncompliance with special conditions not indicated above | ➤ Community service work for up to 80 hours      |

(Continued)

**TABLE 6.1** (Continued)

| LEVEL 2 VIOLATIONS   | LEVEL 2 SANCTIONS   |
|--|---|
| ➤ Continued substance abuse or second positive drug/alcohol test       | ➤ Community restitution work crew for up to 10 days   |
| ➤ Continued missed treatment/programming group                         | ➤ Curfew/restriction to residence   |
| ➤ Failure to comply with Level 1 sanctions                             | ➤ Increased reporting as directed for Alco-Sensor, drug testing, employment search, or other related activity |
| ➤ Contact with restricted persons (non-sex offender/domestic violence) | ➤ Activities to address risk behaviors (self-help)  |
| ➤ Tampering with electronic monitoring equipment                       | ➤ Loss of curfew/placed on schedule   |
|  | ➤ Modification of the case plan to address risk-related behavior  |
|  | ➤ Any Level 1 sanction  |
|  | ➤ Use of electronic monitoring equipment along with Level 1 sanction for up to 60 days                        |
| LEVEL 3 VIOLATIONS   | LEVEL 3 SANCTIONS   |
| ➤ Multiple Level 2 violations  | ➤ Use of electronic monitoring equipment along with Level 2 sanction for up to 60 days                        |
| ➤ Failure to comply with Level 2 sanctions                             | ➤ Modified conditions of probation (risk-related)   |
| ➤ Nonthreatening contact with victim                                   |   |
| ➤ Suspension or placed on probation in treatment/programming group     |   |
| ➤ Misdemeanor behavior (nonrisk/nonviolent)                            |   |
| ➤ Out of place for more than 24 hours                                  |   |

Source: Vermont Department of Corrections (2010).

Note that both the violations and the sanctions attached to them have a three-level hierarchy of increasing seriousness of violation and increasing severity of punishment. Under this scheme, offenders are brought before a judge for technical violations only after they reach Level 3 violations and after all appropriate casework interventions have been exhausted. While state legislatures have designed these assessment tools primarily as cost-cutting devices, they also appear to be useful correctional tools by providing officers with a uniform way of responding to violations, thereby making authoritarian law enforcement-oriented officers less punitive and permissive social work-oriented officers less indulgent with offenders' transgressions.



## ? Ethical Issue

### WHAT WOULD YOU DO?

You are 32-year-old Mary Mitchell's probation officer. She has been on your caseload for nearly 2 years since pleading guilty to shoplifting and drug possession. She has been a model probationer who has maintained employment, never missed an appointment with you, paid all her fines and court costs, and never tested positive for drug use. Now she has missed two appointments in a row and has

not returned your phone calls. You go to her home to investigate and find her lying on a couch disheveled and obviously high. She tells you she is deeply depressed because her mother passed away a month ago and she cannot face the world without her. She begs you not to violate her probation since she has only 2 more months to serve. What are your options, and what do you think you should or will do?

## Probation Officer Stress

**LO 6.6** Identify sources of stress commonly encountered related to the job duties of a probation officer.

Supervising criminal offenders is not the easiest or most lucrative job in the world, although by today's job standards the pay and stability are excellent. According to the Bureau of Labor Statistics, in 2018 the median income (half earn below, half earn above) for probation officers (parole officers also) was \$53,020 a year. The lowest-paid 10% of officers made \$34,630, while the highest-paid 10% made \$94,770 (Bureau of Labor Statistics, 2019). Pay varies by location (cost of living there), rank, and years of service. In addition, federal, state, and local benefits are much better than those typically provided in the private sector and include paid vacations, sick leave, pension, and health, dental, and life insurance plans.

In common with police officers and correctional officers, probation and parole officers are dealing with difficult individuals on a daily basis, often without the tools and support needed to do the job as it should be done. Doing a demanding and sometimes dangerous job under less than adequate conditions can, and does, lead to stress (Slate, Wells, & Wesley Johnson, 2003). For instance, one study of officers in four states found that 35% to 55% reported that they had been victims of threatened or actual violence (Finn & Kuck, 2005). Stress is a physical and emotional state of tension as the body reacts to environmental challenges (stressors). No one can be expected to do a very good job while experiencing stress.

The most important job stressors identified by the officers surveyed by Slate et al. (2003) were poor salaries, poor promotion opportunities, excessive paperwork, lack of resources from the community, large caseloads, and a general frustration with the inadequacies of the criminal justice system. These stressors may eventually lead to psychological withdrawal from the job, meaning that probationers, and thus the community, are getting shortchanged. High stress levels in the department also lead to frequent absenteeism and high rates of employee turnover; thus, it is imperative that the issue of probation and parole officer stress be meaningfully addressed.

Slate et al. (2003) emphasized that an attempt to address the problem of probation officer stress should not be one of counseling officers on how to cope with stress, because the problem is organizational (inherent in the probation system), not personal. They suggested that participatory management strategies be instituted so that each person in the department participates in the decision-making process and, thus, feels valued and empowered. The researchers found that personnel who did participate in decision making reported

fewer stress symptoms and were happier on the job. Participatory management (workplace democracy) leads to a happier and more productive workforce even if nothing else changes—“contented cows give better milk.”

## Engaging the Community to Prevent Recidivism

### LO 6.7 Describe the benefits of engaging the community in offender rehabilitation.

Although probation began as a voluntary community effort in the United States and Britain, community involvement in offender rehabilitation has faded in those countries with the professionalization of probation. Japan is a country in which probation volunteers still dominate. In Japan, there are about 50,000 volunteer officers but only 800 professional officers (Ellis, Lewis, & Sato, 2011).

Western countries probably cannot revive the old level of community involvement, and cultural differences preclude volunteerism at anywhere near Japanese levels (a volunteer probation officer position is highly sought in Japan because it confers high status [Gardner, 1996]). To achieve the average 2.5 ratio of probationers to volunteer probation officers that is enjoyed in Japan (only about 60,000 adults on probation there in 2010 [Ellis et al., 2011]) with the approximately 4 million probationers in the United States would require about 1.6 million volunteer officers. Nevertheless, we can engage our communities in the process of offender rehabilitation more than we are doing now, realizing that whatever helps the offender helps the community.

The criminological literature provides abundant support for the notions that social bonds (Hirschi, 1969) and social capital (Sampson & Laub, 1999) are powerful barriers against criminal offending. Social bonds are connections (often emotional in nature) to others and to social institutions that promote prosocial behavior and discourage antisocial behavior. *Social capital* refers to a store of positive relationships in social networks on which the individual can draw for support. It also means that a person with social capital has acquired an education and other solid credentials that enable them to lead a prosocial life. Those who have opened their social capital accounts early in life (bonding to parents, school, and other prosocial networks) may spend much of it freely during adolescence but, nevertheless, manage to salvage a sufficiently tidy nest egg by the time they reach adulthood to keep them on the straight and narrow. The idea is they are not likely to risk losing this

nest egg by engaging in criminal activity (the contrast effect again). Most criminals, on the other hand, lack social bonds, and largely because of this they lack the stake in conformity provided by a healthy stash of social capital.

If we consider the great majority of felons in terms of deficiency (good things they *lack*) rather than in terms of personal pathology (bad things they *are*), we are talking about a deficiency in social capital. The community can be seen as a bank in which social capital is stored and from which offenders can apply for a loan. That is, the community is the repository of all those things from which social capital is derived, such as education, employment,



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**Photo 6.1** A probation officer's job is highly varied, ranging from interviewing police officers, victims, and family members of the defendant, as well as the defendant themselves, to making midnight raids on a probationer's home.

and networks of prosocial individuals in various organizations and clubs (e.g., Alcoholics Anonymous, religious institutions, hobby or interest centers). Time spent involved in steady employment and with prosocial others engaged in prosocial activities is time unavailable to spend in idleness in the company of antisocial others planning antisocial activities. The old saying that “the devil finds work for idle hands” may be trite, but it is also very true.

Thus, good case management in community corrections requires community involvement. No community corrections agency is able to deliver the full range of offender needs (mental health, substance abuse, vocational training, welfare, etc.) by itself, and thus officers consider themselves intermediaries or brokers of community services. Probation and parole officers not only must assess the needs of their charges but also must be able to locate and network with the social service agencies that address those needs as their primary function. In fact, there are those who maintain that probation and parole officers’ relationships



## Comparative Corrections

### COMMUNITY CORRECTIONS IN THE UNITED KINGDOM

The probation concept is the child of the Christian missionary and temperance movements of the 19th century and grew rapidly during the late 19th and early 20th centuries. Between 1878 and 1920, probation statutes were in place in countries on every continent in the world (Vanstone, 2008). John Augustus can rightfully claim the title of “father of probation” (he coined the term for what he was doing), but in the very same year (1841) a British magistrate in Birmingham, England, named Matthew Davenport-Hill was laying the foundations for probation in Britain. Like Augustus, Davenport-Hill was a deeply religious man and an enemy of alcohol. Unlike Augustus, in addition to helping offenders overcome their problems, Davenport-Hill implemented the supervision of offenders and kept records of their behavior. He used what were known as police court missionaries, who were middle-class volunteers animated by strong Christian and temperance values and augmented by appointed police officers (Gard, 2007). The first full-time professional probation officers in England were appointed in 1907 (Gard, 2007).

As in the United States, probation is the most common disposition of a criminal case in the United Kingdom. The probation service in England and Wales (Scotland and Northern Ireland have separate correctional systems) underwent some broad-reaching changes in response to increasing crime levels during the 1990s. In 2004, the National Probation Service and Her Majesty’s Prison Service were placed under a single umbrella in the form of the National Offender Management Service (NOMS). This change was justified in terms of maintaining offender supervision from prison to release in

the community and consolidating correctional administration. Prior to consolidation, all probation officers held social work qualifications, but now probation officers are called “offender managers,” and the social work aspect of the job is deemphasized. As Robinson and McNeill (2010) put it, “Probation officers in England and Wales . . . are no longer trained as social workers, and the context in which they work is no longer that of a social work agency, but rather a ‘law enforcement agency’” (p. 744).

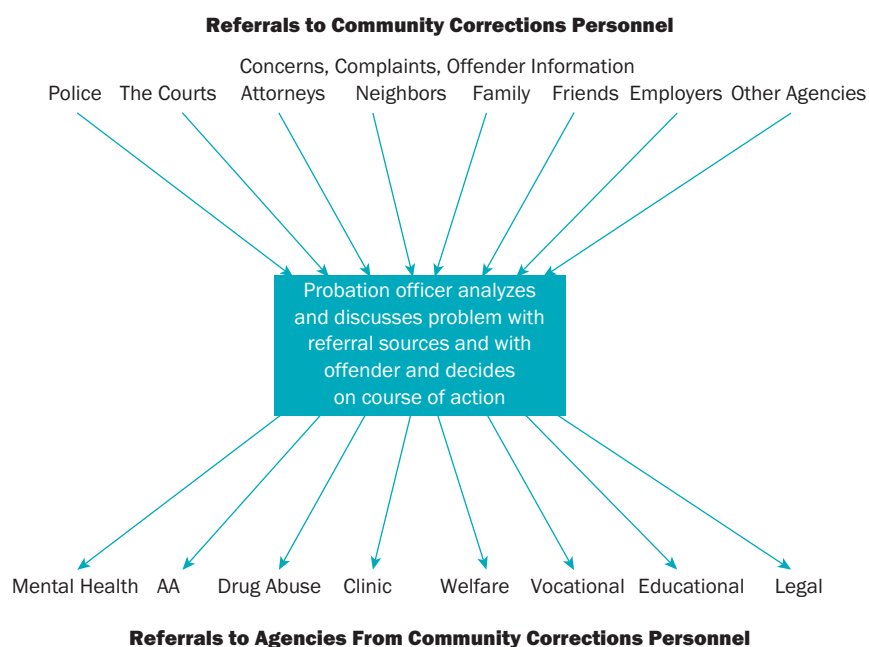
The probation service now seeks to hire ex-military personnel, which says a lot about the new emphasis. Probation officers—cum—offender managers still offer the same programs and services, but they deliver them in a more no-nonsense “pull up your socks, man” attitude than was previously the case. Counseling theories used are now more the directive and confrontational type, such as cognitive behavioral therapy. Robinson and McNeill (2010) quoted a NOMS official in 1999 regarding its new correctional policy framework: “We have put the focus firmly on outcomes—reducing reoffending and improving public protection. Success will be measured in those terms. The achievement of this common aim . . . must be first consideration for everyone engaged in delivering correctional policy, and not an afterthought” (p. 750).

By 2015, the U.K. government had outsourced probation services to private-sector companies (contracted out on a payment-by-result basis) and to voluntary organizations. Public-sector probation was scaled back and focused on supervising the most high-risk probationers and parolees and conducting presentence investigations (Travis, 2013).

with community service agencies are more important than their relationships with their probationers/parolees (Walsh & Stohr, 2010).

Figure 6.4 illustrates the central role of the probation (or parole) officer in community efforts to make the community safe. Officers receive all kinds of information (e.g., concerns, complaints) from people in the community that they need to assess and then decide on a method of action. If the officer decides the concern is beyond their expertise, then the officer will refer it to the appropriate agency. Officers must be skilled at networking with the various agencies if they are to help provide offenders with the services they need. This brokerage function can be best achieved with fewer offenders who are intensively supervised on an officer's caseload than with many who are infrequently seen and haphazardly supervised.

■ **FIGURE 6.4** Flowchart of Referrals in and out of Community Corrections



## Intermediate Sanctions

**LO 6.8** Identify the various intermediate community sanctions and what they have to offer.

### Intermediate sanctions:

A number of innovative alternative sentences that may be imposed in place of the traditional prison/probation dichotomy.

As we see in Figure 6.5, there are many sentencing options that are intermediate between prison and simple supervised probation. **Intermediate sanctions** refer to these alternative sentences that may be imposed in place of the traditional prison-versus-probation dichotomy. Such sanctions are considered intermediate because they are seen as more punitive than straight probation but less punitive than prison. They are a way of easing prison overcrowding and avoiding the financial cost of prison while providing the community with higher levels of safety through higher levels of offender supervision and surveillance than

is possible with regular probation. As we will see, however, these supposed benefits are not always realized. We have already seen that many experienced offenders would choose prison over some of the more strict community-based alternatives. Furthermore, because offenders placed in some sort of alternative sanction program have recidivism rates not much different from those of offenders released from prison within the first year or subsequent years, the costs of state incarceration are deferred rather than avoided (Klinge, 2013; Marion, 2002).

The first alternative in Figure 6.5 is community detention (jail) and is addressed elsewhere in this book. Split sentencing is simply a period of probation preceded by a jail sentence of up to 1 year. The work release option is the first intermediate sanction we examine. Halfway houses and electric monitoring are examined in the next chapter.

## Work Release

**Work release programs** are designed to control offenders in a secure environment while at the same time allowing them to maintain employment. Work release centers are usually situated in or adjacent to county jails, but they can also be part of the state prison system. Residents of work release centers have typically been given suspended sentences and placed on probation with a specified time to be served in work release. Work release residents may also be parolees under certain circumstances, such as the need to closely supervise a new parolee or a parole violator given another opportunity to remain in the community rather than being sent back to prison. Surveillance of work release residents is strict; they are allowed out only for the purpose of attending their employment and are locked in the facility when not working. The advantage of such programs is that they allow offenders to maintain ties with their families and with employers. Such programs also save taxpayers money because offenders pay the cost of their accommodations with their earnings.

Although offenders given work release orders are generally the least likely of all community-based corrections offenders to be rearrested and imprisoned within 5 years of successful completion, one study of a number of such programs found that 64% of offenders successfully released and 71% unsuccessfully released had further arrests within 5 years (Marion, 2002), and as noted in Chapter 1, these figures are consistent from year to year within a percentage point or two. Offenders chosen to partake in work release are typically chosen because, although they have committed crimes deemed too serious for regular probation, they are usually employed, although unemployed probationers can be placed in work release contingent on their finding employment within a specified time (Abadinsky, 2009). Being employed is incompatible with a criminal lifestyle (but, obviously from the above statistics, not completely), especially if the offender is a probationer rather than a parolee.

**Work release programs:** Programs designed to control offenders in a secure environment while at the same time allowing them to maintain employment.

## Intensive Supervision Probation

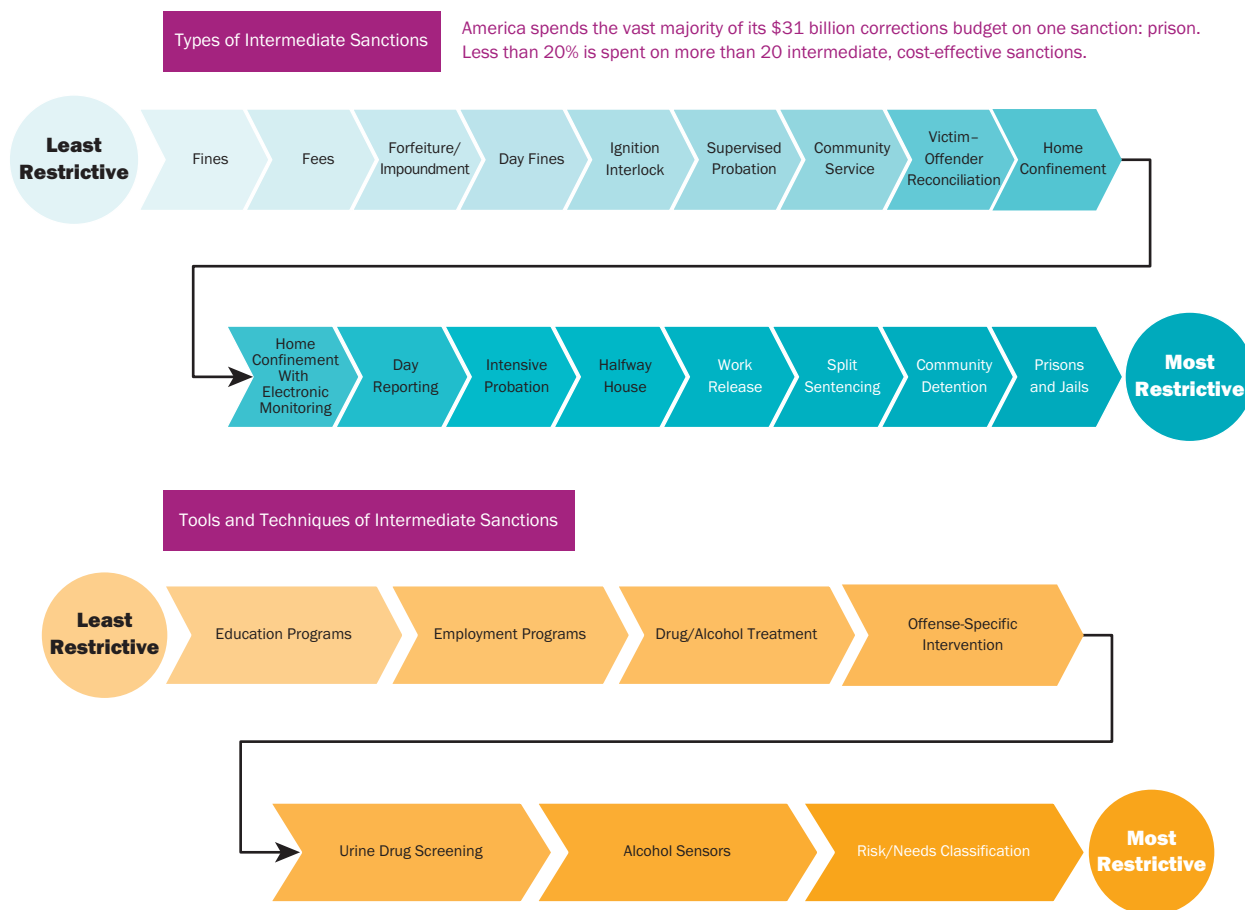
**Intensive supervision probation (ISP)** is typically limited to offenders who probably should not be in the community but have been allowed to remain either in the belief that there is a fighting chance they may be rehabilitated or in an effort to save the costs of incarceration. ISP officers' caseloads are drastically reduced (typically a caseload of 25) to allow them to more closely supervise, often on a daily basis with frequent drug testing and surveillance. Burrell (2006) described ISP officers as "aggressive in their surveillance and punitive in their sanctions" (p. 4). Liberal critics of the tactics of ISP officers describe their model of supervision colorfully as one of "pee 'em and see 'em" or "tail 'em, nail 'em, and jail 'em" (Skeem & Manchak, 2008). This type of law

**Intensive supervision probation (ISP):** Probation that involves more frequent surveillance of probationers and that is typically limited to more serious offenders in the belief that there is a fighting chance that they may be rehabilitated (or to save the costs of incarceration).



■ **FIGURE 6.5** The Continuum of Correctional Sanctions by Restrictiveness

Source: Center for Community Corrections (1997). U.S. Department of Justice.



enforcement surveillance is the kind of supervision required with high-risk offenders (Walsh & Stohr, 2010).

A study conducted by MacKenzie and Brame (2001) hypothesized that ISP coerces offenders into prosocial activities that in turn lead to a lower probability of their reoffending. Intensive supervision means that probation officers maintain more frequent contact with probationers and intrude into their lives more than is the norm with other probationers. Offenders on ISP are supervised at that level because they have the greatest probability of reoffending (they are high risk) and are the most deficient in social capital (they have high needs). Higher levels of supervision allow officers to coerce offenders into a wide variety of educational and treatment programs and other prosocial activities designed to provide offenders with social capital. MacKenzie and Brame found that ISP did result in offenders' being coerced into more prosocial activities and that there was a

slight reduction in recidivism. The issue the study left unresolved is whether participating in prosocial activities enabled offenders to acquire skills that provided them with social capital they could put to good use or whether intensive supervision per se accounted for their findings.

The term *coercion* has negative connotations for the more libertarian types among us (“You can lead a horse to water . . .” and all that), but the great majority of people being treated for problems such as substance abuse have very large boot prints impressed on their backsides. Probationers and parolees, almost by definition, will not voluntarily place themselves in the kinds of programs and activities we would like them to be in—they are simply not motivated in that direction. The criminal justice system must provide that motivation via the judicious use of carrots and sticks. Reviews of the U.S. literature (Farabee, Prendergast, & Anglin, 1998) and U.K. literature (Barton, 1999) on coerced substance abuse treatment concluded that coerced treatment often has more positive outcomes than voluntary treatment, probably because of the threat of criminal justice sanctions.

### Shock Probation and Parole and Boot Camps

Shock probation was initiated in Ohio during the 1970s and was designed to literally shock offenders into desisting from crime by briefly exposing them to the horrors of prison. It was limited to first offenders who had perhaps been unimpressed with the realities of prison life until given a taste. Under this program, offenders were sentenced to prison and released after (typically) 30 days and placed on probation. In some states, a person may receive shock parole, which typically means that they have remained in prison longer than a shock probationer and is released under the authority of the parole commission rather than to the courts. Most of the research on this kind of shock treatment was conducted during the 1970s and 1980s and concluded that shock probationers and parolees had lower recidivism rates than incarcerated offenders not released under shock conditions (Vito, Allen, & Farmer, 1981). This should not be surprising, however, given the fact that those selected for shock probation or parole were either first offenders or repeaters who had not committed very serious crimes.

When we hear of shock incarceration today, it is typically incarceration in a so-called boot camp. **Correctional boot camps** are facilities modeled after military boot camps. Normally only relatively young and nonviolent offenders are sent to correctional boot camps. They are usually there for short periods (90–180 days) and are subjected to military-style discipline and physical and educational programs. Boot camps are the most unpopular sentencing alternative with offenders. In May et al.’s (2005) analysis of “exchange rates,” discussed earlier, offenders who had served time in prison would be willing to spend an average of only 4.65 months in boot camp to avoid 12 months in prison. Interestingly, judges and probation and parole officers also agree that boot camp is more punitive than prison, estimating that their charges would be willing to serve only 6.19 and 6.05 months, respectively, to avoid 12 months in prison (Moore, May, & Wood, 2008).

The idea of boot camps for young adult offenders was once popular among the general public as well as among a considerable number of correctional personnel and criminal justice academics. Boot camps conjured up the movie image of a surly, slouching, and scruffy youth forced into the Army who 2 years later proudly marched back into the old neighborhood with a crew cut, sparkingly clean and properly motivated and disciplined. Yes, the drill

#### **Correctional boot camps:**

Facilities modeled after military boot camps where young and nonviolent offenders are subjected to military-style discipline and physical and educational programs.



**Photo 6.2** Boot camps feature no-nonsense discipline and hard work modeled on military boot camps.

sergeant with righteous fire and brimstone would do what the family and social work-tainted juvenile probation officers could never do.

Such magical transformations rarely happen in real life. The Army merely provided many such youths with new opportunities to offend, and they spent much of their time either avoiding the MPs (military police) or lodged in the brig while awaiting their dishonorable discharges. Bottcher and Ezell's (2005) evaluation of offenders sent to correctional boot camp in California revealed the same sorry outcome. Specifically, they found no significant differences between their experimental group (boot campers) and a control group of similar offenders not sent

to boot camp in terms of either property or violent crime reoffending. In other words, boot camps have joined the woeful list of correctional programs that have proved to be ineffective.

## Victim–Offender Reconciliation Programs

**Victim–offender reconciliation programs (VORPs):** Programs designed to bring offenders and their victims together in an attempt to reconcile the wrongs offenders have caused.

**Restorative justice:** A system of justice that gives approximately equal weight to community protection, offender accountability, and the offender.

**Balanced approach:** A three-pronged goal of the juvenile justice system: (a) to protect the community, (b) to hold delinquent youths accountable, and (c) to provide treatment and positive role models.

**Victim–offender reconciliation programs (VORPs)** are programs designed to bring offenders and their victims together in an attempt to reconcile (“make right”) the wrongs offenders have caused and are an integral component of the **restorative justice** philosophy. This philosophy differs from models (retributive, rehabilitative, etc.) that are offender driven (what do we do with the offender?) in that it considers the offender, the victim, and the community as partners in restoring the situation to its previctimization status. Restorative justice has been defined as “every action that is primarily oriented toward justice by repairing the harm that has been caused by the crime . . . [and] usually means a face-to-face confrontation between victim and perpetrator, where a mutually agreeable restorative solution is proposed and agreed upon” (Champion, 2005, p. 154). Restorative justice is often referred to as a **balanced approach** in that it gives approximately equal weight to community protection, offender accountability, and offender competency.

Many crime victims are seeking fairness, justice, and restitution *as defined by them* as opposed to revenge and punishment. Central to the VORP process is the bringing together of victim and offender in face-to-face meetings mediated by a person trained in mediation theory and practice (Walsh & Stohr, 2010). Meetings are voluntary for both offender and victim and are designed to iron out ways the offender can make amends for the hurt and damage caused to the victim.

Victims participating in VORPs gain the opportunity to make offenders aware of their feelings of personal violation and loss and to lay out their proposals for how offenders can restore the situation. Offenders are afforded the opportunity to see firsthand the pain they have caused their victims and perhaps even to express remorse. The mediator assists the parties in developing a contract agreeable to both. The mediator monitors the terms of the contract and may schedule further face-to-face meetings.

VORPs are used most often in the juvenile system but are rarely used for violent crimes in either juvenile or adult systems. Where they are used, about 60% of victims invited to participate actually become involved, and a high percentage (95% or more) of VORPs



## In Focus 6.1

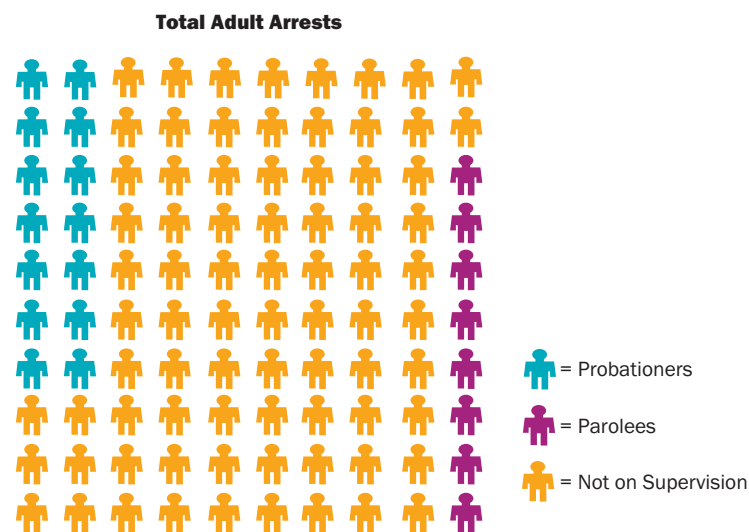
### COMMUNITY SUPERVISION AND RECIDIVISM

It is an article of faith among police officers that it is only a matter of time before a probationer or parolee commits another crime, but little is known about the probability of a person under community supervision being arrested versus someone not under supervision being arrested. An ambitious effort to find out was conducted by the Council of State Governments Justice Center (2013) on the basis of adult arrests occurring in four California jurisdictions (Los Angeles County, San Bernardino County, Sacramento County, and San Francisco County) from 2008 to 2011. The accompanying figure shows that probationers and parolees

combined accounted for just over 22% of the total arrests. However, 40% of arrestees not under supervision at the time had histories of criminal justice supervision. The 147,700 people under supervision represented about 1% of the combined population of more than 14 million people residing in those counties. Thus, factoring out characteristics of individuals not likely to be arrested—such as the very young and the very old—probationers and parolees are at the very least 10 times more likely to be arrested than individuals in general. The crimes for which probationers and parolees were most likely to be arrested were drug related.

■ **FIGURE 6.6** Comparing Probationer and Parolee Arrests With Arrests of People Not Under Supervision in Four California Counties, January 2008 to June 2011

Source: Council of State Governments Justice Center (2013).



result in signed contracts (Coates, 1990). A more recent study found that about 90% of victim–offender sessions result in restitution agreement contracts, with 80% to 90% completed satisfactorily, and that offenders who participated in victim–offender mediation paid their victims about 95% more than what was paid to victims who went through more traditional court processes (Hansen & Umbreit, 2018). Umbreit (1994) summed up the various satisfactions reported by victims who participated in VORPs:

1. Meeting offenders helped reduce their fear of being revictimized.
2. They appreciated the opportunity to tell offenders how they felt.

3. Being personally involved in the justice process was satisfying to them.
4. They gained insight into the crime and into the offender's situation.
5. They received restitution.

VORPs do not suit all victims, especially those who feel that the wrong done to them cannot so easily be “put right” and who want the offender punished (Olson & Dzur, 2004). In addition, the value of VORPs for the prevention of further offending has yet to be properly assessed.

## SUMMARY

### LO 6.1 Explain the origins and purpose of probation.

- Community-based corrections is a way of attempting to control the behavior of criminal offenders while keeping them in the community. Although conditional release (judicial reprieve) was practiced in ancient times in common law, probation wasn't really established until the 20th century. Although often considered too lenient, community corrections benefits the public in many ways. Probation helps offenders in many ways, and what helps offenders automatically helps the communities in which they live.

### LO 6.2 Describe the demographics and characteristics of offenders on probation.

- More men than women are placed on probation. The largest majority are white. The exit rate is roughly 50%. Of those who exit probation, about 66% successfully completed probation, 15% were incarcerated, 2% absconded, and 17% were categorized as other.

### LO 6.3 Describe the advantages of probation over incarceration for some offenders and for community offenders.

- There are many reasons to recommend probation over prison for many offenders, including saving the high cost of incarceration, allowing offenders to maintain family contacts and employment, and preventing them from becoming more embedded in a criminal lifestyle. However, there are many offenders who must be incarcerated for the safety of the community.

### LO 6.4 Analyze the probation officer role and models of probation supervision.

- Probation officers are both law enforcement officers and social workers. They follow a supervision style consistent with their department's philosophy and

their own personalities. Some emphasize the law enforcement role, some emphasize the social worker role, and others emphasize one or the other when the occasion arises. The latter supervision style, dubbed the hybrid style, consistently gets the best results.

### LO 6.5 Explain the purpose of graduated sanctions for technical violations of probation.

- For both cost-cutting and consistency concerns, many probation departments have initiated guidelines to determine officers' responses to technical violations. These guidelines graduate the severity of the sanctions imposed against offenders in accordance with the severity of their violations.

### LO 6.6 Identify sources of stress commonly encountered related to the job duties of a probation officer.

- Because of the dangers inherent in the job and officer perceptions of poor salaries, excessive paperwork, and large caseloads, among other things, probation officer stress is a major concern. However, the job can be interesting and exciting, and the median salary is about \$10,000 more than the median salary of all occupations requiring a BA or a BS in a social science.

### LO 6.7 Describe the benefits of engaging the community in offender rehabilitation.

- Engaging the community in the task of rehabilitating criminals should be a major concern of community supervision agencies. Engaging the community involves officers' paying close attention to concerns and complaints about offenders on their caseloads flowing in to them and being aware of the agencies outside their departments that offer services that may help offenders. It also means adopting effective volunteer probation officers' programs within their departments.



**LO 6.8** Identify the various intermediate community sanctions and what they have to offer.

- Intermediate sanctions are considered to be more punitive than regular probation but less punitive than prison, although experienced criminals do not necessarily share that view. Some of these programs, particularly work release, show positive results, although this may be more a function of the kinds of offenders placed in them rather than the programs themselves. Most participants in these programs, however, tend to recidivate at rates not significantly different from those of parolees.
- Victim–offender reconciliation programs are a fairly recent addition to community corrections. They consider the victim, the offender, and the community as equal partners in returning the situation to its previctimization status. This idea of restorative justice is mostly used with juvenile offenders and minor adult offenders.

## KEY TERMS

|                         |     |                                |     |                                |     |
|-------------------------|-----|--------------------------------|-----|--------------------------------|-----|
| Balanced approach       | 158 | Intermediate sanctions         | 154 | Victim–offender reconciliation |     |
| Community corrections   | 143 | Judicial reprieve              | 140 | programs (VORPs)               | 158 |
| Correctional boot camps | 157 | National Probation Act of 1925 | 141 | Work release programs          | 155 |
| Intensive supervision   |     | Probation                      | 140 |                                |     |
| probation (ISP)         | 155 | Restorative justice            | 158 |                                |     |

## DISCUSSION QUESTIONS

1. Looking at all the pros and cons of community-based corrections, do you think probation is too lenient for felony offenders? If so, what should we do with them?
2. In your opinion, what is the single biggest benefit of probation for the community and its single greatest cost?
3. Should probation and parole officers carry guns if they are supposed to be social workers as well as cops?
4. Boot camps have full and total control of offenders for up to 6 months, so why are they not able to change offenders' attitudes and behaviors?
5. Do you think police officers should be given the same powers of search and seizure as probation and parole officers for the purposes of controlling the activities of probationers and parolees?



Justin Sullivan/Getty Images

# 7

## Prisons and the Correctional Client

### TEST YOUR KNOWLEDGE

Test your current knowledge of prisons by answering the following questions. Check your answers on page 387 after reading the chapter.

1. The incarceration rate in the United States remains the highest in the world. (True or false?)
2. Most inmates serve out their sentences in maximum-security prisons. (True or false?)
3. What factors describe a medium-security prison? How is it similar to and different from maximum- and minimum-security prisons?
4. What are prisonization and importation in the prison context?
5. What are gangs, and what role do they play in the prison subculture?
6. Why does violence exist in prisons?
7. Transgender inmates, particularly in men's prisons, are more likely to be sexually assaulted than any other group of inmates. (True or false?)

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 7.1 Describe the current state of the prison system and the factors that affect it.
- 7.2 Identify the different types of prisons and their classifications.
- 7.3 Discuss the cost/benefit analysis of the value of prison.
- 7.4 Explain what prisonization, mortification, importation, pains of imprisonment, and mature coping are and how they influence inmate behavior.
- 7.5 Explain what prison gangs are and why they exist in prisons.
- 7.6 Identify the reasons why violence, riots, and sexual assaults occur in prisons and be familiar with some strategies for their reduction.
- 7.7 State why care for aging inmates, physically ill inmates, and inmates with mental illnesses in prisons has become such an issue.
- 7.8 Recognize the need to respect the needs of LGBTQ+ inmates.
- 7.9 Identify the challenges faced in prisons housing those seeking asylum.

### KITCHEN SUPERVISOR SEXUALLY ABUSES TWO MALE INMATES

Carl David Evans, the kitchen supervisor in a federal prison in Phoenix, Arizona, sexually abused two male inmates whom he supervised ("Kitchen Supervisor Gets Prison Time," 2014). He would take each inmate into a food storage area of the kitchen and give him a package of cigarettes (which in turn could be sold for as much as \$150 to other inmates) in exchange for sex. After the Federal Bureau of Investigation learned of the abuse of one of these inmates, they placed a video camera in the storage area and caught Evans and the inmates having sex on camera.

Evans pleaded guilty to five of the federal charges against him in February 2013. He was sentenced to 36 months in prison, 3 years on supervised release, and a \$5,000 fine ("Kitchen Supervisor Gets Prison Time," 2014, p. 20).

## Introduction: The State of Prisons

### LO 7.1 Describe the current state of the prison system and the factors that affect it.

It has become axiomatic to say that correctional programs and institutions are overcrowded, underfunded, and unfocused these days. For the better part of 40 years, the drug war has raged on, mandatory sentencing has had its effect, and probation and parole caseloads and incarceration rates have spiraled out of control. As a consequence, though spending on corrections had until recently steadily and steeply climbed, it was and largely still is nearly impossible for most states and localities to meet the needs for programs, staff, and institutions. So they do not. As a consequence, the corrections experience for staff and offenders continues to be shaped by shortages.

However, in the past 10 years, there has been a reconsideration of the drug war: At the time of this writing (spring 2020), recreational marijuana use has been legalized in 11 states (Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington) and the District of Columbia, and medical marijuana use has been legalized in several others. It is likely that many more states will move to legalize marijuana in the near future. As discussed in other chapters in this book, a few years ago Congress reduced the sentencing disparity between crack and powder cocaine, and some states have followed suit. The effect of these two changes—marijuana legalization and reduced sentences for crack cocaine—has been to reduce correctional populations. In addition, several states have rescinded their mandatory sentences for drugs and other crimes (e.g., “three strikes and you’re out” laws), which is also limiting time spent in prisons (Garland et al., 2014). The focus on correctional treatment, a move away from retribution and deterrence as sole justifications for prisons and other forms of corrections, has also reduced populations (some things do work for some people, and often treatment works best in the community). Finally, the cost of corrections for states and localities, particularly after the recession of 2007 hit, has caused those governmental units to shutter prisons and jails and to rethink the use of prisons, the most expensive correctional option (Cullen, Jonson, & Stohr, 2014). The collective effect of these changes in law and policy has been decarceration in several states and localities.

As has been discussed already in this text, it has always been somewhat true that the corrections experience has tended to be shaped by shortages. With the exception of the recent

past, if it has been built (or in the case of probation and parole, offered) they will come—because, as with all corrections sentences, they are forced to. Here are cases in point: Almost immediately after the first American prisons were built, the Walnut Street Jail (1790), the Auburn Prison (1819), the Western Pennsylvania Prison (1826), and the Eastern Pennsylvania Prison (1829) were full, and within a few years, they had been expanded or new prisons were under construction.

To say that crowding and corrections have always been linked, of course, is not to dismiss the negative effects of overfilling institutions. Certainly, despite some decarceration we are seeing across the United States, the combined incarceration rate for jails and prisons remains



AP Photo/Brynn

**Photo 7.1** A crowded dormitory at the Elmore Correctional Facility in Elmore, Alabama. Crowding makes the lives of inmates much harder, while it makes their supervision by staff more complicated and results in prisons that are much more dangerous.



the highest in the westernized world at 657 per 100,000 U.S. residents as of 2018 (prisons separately had a rate of 431) (Carson, 2020, p. 1; Zeng, 2020, p. 1). For comparison, this rate was 760 in 2007 and 2008 and is currently the lowest it has been since 1996 (Carson, 2020, p. 1). Despite these decreases, jails remain at 80% of capacity, and in 12 states and the Federal Bureau of Prisons, prisons exceeded their rated capacity (Carson, 2020, p. 25; Zeng, 2020, p. 1). Even with some excess space in most prisons and jails, this does not mean there is always room for flexibility in classification, especially in those facilities with 90% plus of their beds filled (i.e., Nebraska at 130%, Iowa at 125%, New Mexico at 115%, the Bureau of Prisons at 112%, Idaho at 111%, Colorado at 109%, and Washington at 104%; Carson, 2020, p. 25).

In this chapter, we discuss the structure and operation of prisons. The inmate subculture that flourishes in prisons and the violence and gangs that trouble them will also be reviewed. The nature of the correctional experience for individuals incarcerated in prisons is somewhat different from what those in jails or community corrections encounter, and those differences are explored here.

## Prison Organizations

### LO 7.2 Identify the different types of prisons and their classifications.

Inmates, once entered into the prison system, are reviewed and classified for placement in a facility. Facilities range in type on the basis of security level and the demographics of the offenders housed there.

### Classification

As inmates enter the prison system from the courts, they are usually assessed at a classification or reception facility on the basis of their crimes, criminal histories, escape risk, behavioral issues (if any), and health and programming needs. Women and children are classified in separate facilities from men. This assessment includes the review of materials related to the inmate by reception center personnel as well as tests and observation of the inmate regarding their dangerousness and amenability to treatment. After being assessed by prison personnel for a period of weeks or months, inmates are sent to the prison the personnel believe is the best fit, based first on security needs, then on space available, and finally on the inmates' needs. Inmates generally have no control over which prisons they are sent to. Once they have done some time, inmates may request that they be moved to facilities that are closer to their family and friends, but such considerations are not a priority for classification and are more an option for men, as the facilities available for transfer for women and juveniles are much more limited because there are fewer of them.

### Prison Types and Levels

**Prisons** were and are used for long-term and convicted offenders who are to be simultaneously punished (experience retribution), deterred, and reformed (rehabilitated) while being isolated (incapacitated) from the community and, for most, reintegrated back into that community. As the number of prisons has expanded across the United States, their diversity has increased. Rather than just all-purpose maximum- or medium-security prisons, as was the norm when prisons were first built, there are state and federal prisons with myriad security levels, including supermaximum, maximum, medium, and minimum. There are prisons for men, for women, for men and women, for children, and for military personnel. Prisons come in the form of regular confinement facilities but also as prison farms, prison hospitals, boot camps, reception centers, community corrections facilities (sometimes known as work release or day reporting facilities), and others (Stephan, 2008).

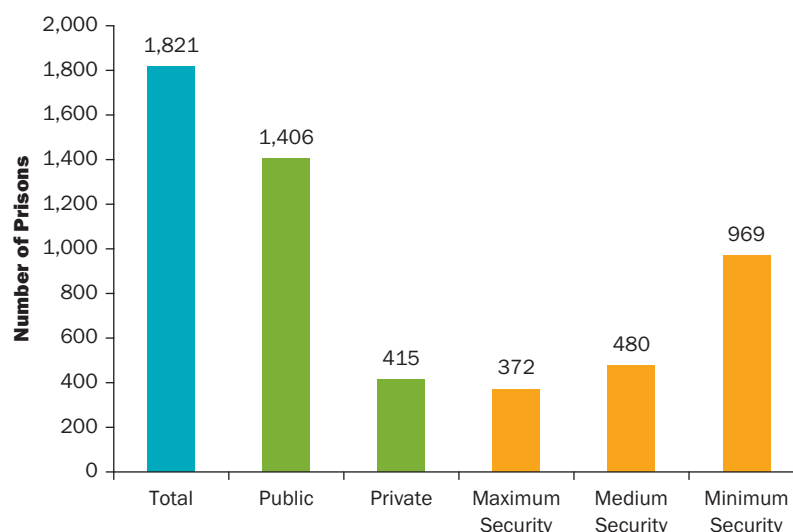
**Prisons:** Correctional facilities that have a philosophy of penitence (hence *penitentiary*) and that were created as a grand reform, as they represented, in theory at least, a major improvement over the brutality of punishment that characterized early Western, English, and American law and practice.



As indicated in Figure 7.1, as of 2005 (the latest state and federal correctional facilities census data publication available at the time of writing), there were 1,821 state and federal prisons in the United States—1,406 of which were public and 415 of which were under private contract with either a state or the federal government (Stephan, 2008, p. 2). Most prisons were operated by or under contract with a state (1,719) rather than at the federal level (102). Although only about one fifth of the prisons in the United States are designated as maximum security, because of their size they hold about one third of the inmates incarcerated in this country (Stephan, 2008, pp. 2, 4). In contrast, medium-security prisons constitute about one fourth of prisons but hold two fifths of inmates—again, perhaps because of their relatively large size compared with minimum-security prisons, which constitute about half of all prisons but hold only about one fifth of inmates (Stephan, 2008, p. 4). These data do indicate that the popular and academic depictions of maximum-security prisons as the norm in America are incorrect. Most prisons in the United States are of the medium- or minimum-security type, rather than maximum, and most inmates (about three fifths) are held in them.

■ **FIGURE 7.1** State and Federal Correctional Facilities

Source: Bureau of Justice Statistics (2008). Most recent data available.



### SUPERMAX PRISONS

When states were first building prisons, they tended to be combinations of maximum- and medium-security types (think industrial and Big House prisons). The exterior of such prisons was very secure, but internally inmates were given some, though restricted, freedom to move about and were often expected to do so for work, dining, and related purposes.

**Supermax prisons** (the slang term for supermaximum-security prisons) developed later, and arguably the first of these was at the federal level with the Alcatraz Prison, which was built in 1934 to hold the most notorious gangsters of its era. Others argue the first full-fledged supermaxes did not develop until the 1980s and were part of the “get tough on crime” movement that promoted more severe punishment (e.g., see Mears, 2013). Today, supermax prisons at the federal and state levels are not all operated exactly the same way, though certain characteristics do appear to be common: Inmates are confined to their

#### Supermax prisons:

High-security prisons, both internally and externally, that hold those who are violent or disruptive in other prisons in the state or federal system. Inmates are confined to their windowless cells 24 hours a day, except for showers three times a week (during which they are restrained) and solitary exercise time a couple of times a week. Prisoners eat in their cells, and visiting and programming are very limited.

windowless cells 23 hours a day, except for showers three times a week (during which they are restrained) and solo exercise time a couple of times a week. They eat in their cells, and often the meal is *nutriloaf* (a bland but nutritious food that requires no utensils). If any limited rehabilitation is provided, the treatment personnel stand outside the cell and talk to the inmate within, and all physical contact is prohibited unless inmates are in restraints (Pizarro & Narag, 2008). Moreover, their confinement is usually lengthy, not for a day or a week or even a month but for a year or more (Mears, 2013).

Alcatraz closed in 1963, and other federal supermaxes in Marion, Illinois (which opened in 1963 to take some Alcatraz inmates), and later Florence, Colorado (1994), took its place. States began building supermaxes in earnest in the 1980s and 1990s in reaction to the felt need to control more dangerous and disruptive inmates and to “get tough” with them (Mears, 2008, 2013; Olivero & Roberts, 1987; Richards, 2008). It is estimated that a total of 44 states, holding some 25,000 inmates, have some form of a supermax (Mears, 2013, p. 684), though definitions of what a supermax is vary across the states (Naday, Freilich, & Mellow, 2008). As with Alcatraz, these supermax prisons at the federal and state levels are supposed to hold the most dangerous offenders, violent gang members, those who cannot behave well in lower security prisons, and those who pose an escape risk.

Because of the heightened security requirements, incarceration in a supermax is expensive at more than \$60,000 per year to incarcerate one man, compared with \$15,000 (Alabama) to \$70,000 (New York) in lower security prisons in 2015 (McClelland, 2012; Richards, 2008, p. 18; Mai & Subramanian, 2017, p. 1). In addition, because of the materials used in their construction, they are at least 2 to 3 times more expensive to build than a “regular” prison (Mears, 2008). The research indicates that wardens believe the presence of a supermax in a prison system deters violent offenders, increases order and control, and reduces assaults on staff in the other prisons in that system, not just in the supermax itself (Pizarro & Narag, 2008). Several states (e.g., Texas, Colorado, and California) have claimed that violence decreased in their systems once they opened supermax facilities. Sundt, Castellano, and Briggs (2008) reported that inmate assaults on staff decreased in Illinois once the supermax was opened in that state, though there was no effect for inmate assaults on inmates.

Critics and some researchers claim that inmates’ mental health is impaired after a stay in a supermax because of the sensory deprivation, and there is some evidence to support this assertion (Mears, 2013). There is also evidence that supermaxes are sometimes used to incarcerate those who either have mental illnesses or have committed more-minor infractions (Mears, 2008; O’Keefe, 2008). The effect of incarcerating less serious or mentally impaired offenders in a supermax, as King, Steiner, and Breach (2008) noted, can be a self-fulfilling prophecy of exacerbating inmate mental and behavioral problems through such secure and severe confinement (see the story of the inmate held in the Doña Ana County, New Mexico, jail that appears at the beginning of Chapter 5). On the other hand, some researchers have found evidence that such a stay had a calming effect on inmates, allowing them to reflect on their wrongs and how they might change their behavior (e.g., see Ward & Kassebaum, 2009). Pizarro and Narag (2008) noted, however, that the



AP Photo/Brennan

**Photo 7.2** The supermax prison in Florence, Colorado, is considered a possible site for housing Guantanamo detainees in the future.

evidence is weak on both sides of this argument, and further and more rigorous research is merited before we will know the true effect of supermaxes on inmates or on prison systems. In the meantime, some of these states, such as Colorado and Illinois, have reduced their supermax prison populations or closed these prisons altogether because the cost to run them is so prohibitive and because it is no longer believed that they represent the best way to handle inmates (McClelland, 2012).

Related research on the effects of isolation has occurred on segregation units, located primarily in both maximum-security and medium-security prisons. In a recent review of 2 years of data on the effects of segregation, Campagna and his colleagues (2019) found that the length of placement in disciplinary segregation and incarceration did serve to further harm mental health. This research confirms the findings of others that disciplinary segregation, whether it be in a specialized unit (see, e.g., Miller & Young, 2006) or in a whole prison, especially when lengthy, has the potential for harming the mental health of its inhabitants (Metzner & Fellner, 2010).

### MAXIMUMS

State and federal and military laws, traditions, and practices differ on how each type of prison operates, but some generalizations about how prisons with different security levels function are usually accurate. Those prisons with the greatest internal and external security controls are the supermaximums, and next in security are the **maximum-security prisons**. Inmates in supermaxes are often locked up all day, save for a shower or recreation time outside their cells, and they are ideally housed in single cells deprived of other sensory stimulation. Regular maximum-security facilities also tend to confine inmates in cells for most of the day and deprive them of stimulation, but not as much as supermaxes. Visits and contact with the outside are very restricted. The maximum and supermax exterior security consists of some combination of layers of razor wire, walls, lights, cameras, armed guards, and attack dogs on patrol.

Inmates tend to be those who have committed very serious offenses or those who have problems adhering to the rules in prisons; death rows, in states with capital punishment, are usually located in maximum-security prisons.

As the states that have supermax facilities usually have only one, maximum-security prisons are responsible for holding most of the serious offenders and those who could not handle themselves in the relatively freer environment of medium- and minimum-security prisons. The latter type of inmate might be able to qualify for a medium- or minimum-security classification but instead is in maximum security because the inmate is unable to control their behavior.

In many states where the death penalty is legal, death rows are located at maximum-security prisons. Death rows are usually wholly separate areas of prisons, sometimes in different buildings, and often have their own separate designated staff and procedures. (For a more involved discussion of the death penalty, see Chapter 13.)

Maximum-security prisons may have the same exterior security controls as supermaxes, but inside inmates are not locked down as much, though the treatment and work programming are much more constricted than in medium-security prisons. Maximum-security inmates may or may not be double-bunked, depending on the crowding in the institution, and unless under some special classification, they have some access to the yard (a large gathering area for inmates), the cafeteria, and the chapel. Visiting and contact with the outside world are less restricted than in the supermax, and inmates are usually not in some kind of restraint when it occurs.

### MEDIUMS

In **medium-security prisons**, the exterior security can be as tight as it is for supermax and maximum-security prisons, but internally the inmate has many more opportunities to attend school, treatment, and religious programming and to work in any number of

#### Maximum-security prisons:

These facilities have high external and internal security. Maximum-security prisons may have the same exterior security controls as supermaxes, but they inside inmates are not locked down as much, though the treatment and work programming are much more constricted than in medium-security prisons.

#### Medium-security prisons:

Hold a mix of people in terms of crime categories but who program well. They offer high external security, but inmates are able to move around more freely within the "walls." Some are built like a college campus, with several buildings devoted to distinct purposes.



capacities. There is also greater diversity in rooming options, from dormitories to single cells, with the preferred single or double cells used as a carrot to entice better behavior. Visiting and contact with the outside world are less restricted. Some medium-security inmates may even be allowed to leave the institution for work-related deliveries or on furloughs, though this is much more common in minimum-security prisons.

Medium-security prisons hold a mix of people in terms of crime categories, all the way from the convicted murderer doing life, but who programs well, down to the lowly or drug user who is awaiting transfer to a lower security prison or who is engaged in the substance abuse programming the prison affords. Medium-security prisons are more likely to have a college campus-type interior, with several buildings devoted to distinct purposes. There might be a separate cafeteria building, a separate programming and treatment building, a separate gym and recreation building, and separate work and housing buildings. Medium-security prisons are heavily engaged in industrial work such as building furniture, making clothing, and printing license plates for the state. In some cases and states, the goods produced in the prison are sold on the open market.



Thinkstock Images/Comstock

**Photo 7.3** Inmates in the yard at Mule Creek State Penitentiary in California. Prison yards provide a modicum of freedom for inmates but can be dangerous because the inmate-to-officer ratio is so high.

## MINIMUMS

**Minimum-security prisons** have a much more relaxed exterior security; some do not even have a wall or a fence. Inmates are provided with far more programming both inside the institution and outside in the community. The housing options are often as diverse as in medium-security prisons, and inmates can usually roam the facility much more freely, availing themselves of programming, recreation, the yard, the chapel, and the cafeteria at prescribed times. With the recognition that inmates in a minimum-security prison will often be free within a year or two, visiting options are more liberalized to make the transition from prison to the community smoother. Work is promoted, and inmates are often encouraged (or, in the case of work release facilities with a minimum security classification, expected) to work in the community.

Inmates confined to minimum-security prisons are usually “short timers,” or people who are relatively close to a release date. These could be people who have been classified directly to this prison or work release facility because they received sentences of a year or two and because they are not expected to pose an escape risk or behavioral problems. Whether they can work might also be a consideration in classification, as work is often a central element of these prisons. Other inmates who might do time in a minimum-security prison or work release facility are more serious offenders who have moved through, or “down,” the other classification levels and are relatively close to their release. Minimum-security prisons thus also hold the most serious offenders, including murderers, rapists, and child molesters, along with those convicted of burglary and substance abuse and trafficking offenses. The difference is that in minimum-security prisons, all such offenders, no matter their offenses, are believed to pose a low risk for behavioral problems and to be in need of preparation for their imminent release.

### Minimum-security prisons:

Created for lower level felony offenders and those who are “short timers,” or people who are relatively close to a release date. Inmates are not expected to pose escape or behavioral problems. Ability and willingness to work are often prerequisites for classification to this type of facility.

## Prison Value?

### LO 7.3 Discuss the cost/benefit analysis of the value of prison.

Placing someone in prison is a very expensive decision, costing states and the federal government on average well over \$30,000 (California spends more than \$75,000) per year per adult male inmate and more than double that for women and children (Bureau of Justice Statistics [BJS], 2011; Mai & Subramanian, 2017; Thompson, 2017). In the past, this cost was not always considered by policymakers intent on locking up those who had offended even in relatively minor ways. As discussed in preceding chapters, prisons and other means of “correcting” were created to achieve retribution, deterrence, incapacitation, rehabilitation, and reintegration. Note that Cullen and Jonson (2012, pp. 10–12) would add restorative justice, or “reducing harm” for the victim, the community, and the offender, and early intervention, or “saving children,” to this list of theoretical goals for correctional entities.

Whether retribution is achieved by imprisonment and, if so, how much imprisonment is needed to achieve it are philosophical and ultimately subjective matters left to judges and juries and social commentators. Achieving incapacitation is a much more tangible objective, however. When a person is removed and kept away from a community, as they are when incarcerated in a jail or prison or to a lesser extent when the individual’s movements are restricted on probation or parole, it is obvious that incapacitation has been achieved. There is even evidence that incapacitation is related to reduced criminality in the range of three to six crimes per year for some criminals (Owens, 2009; Sweeten & Apel, 2007).

However, measuring whether corrections has had the effect of deterring or rehabilitating is not always obvious or easy to do. We do know that imprisonment for more than a year has not been consistently linked to reduced crime, and thus imprisonment does not appear to deter. Instead, it may prove criminogenic in that it exposes the incarcerated to deviant attitudes and beliefs and stigmatizes the individual, thus limiting their future employment and social opportunities (Nagin, Cullen, & Jonson, 2009). However, as will be discussed in Chapter 14, on programming and treatment, there is solid evidence that when instituted correctly, some treatment programs, even in prison, can reduce recidivism. Therefore, any positive “value” of imprisoning must be assessed on the basis of what is a desirable outcome, the research on whether this outcome can be achieved in a prison, and the financial cost of achieving that outcome.

## Attributes of a Prison That Shape the Experience

### LO 7.4 Explain what prisonization, mortification, importation, pains of imprisonment, and mature coping are and how they influence inmate behavior.

#### Total Institutions, Mortification, Importation, and Prisonization

Once classified to a given prison, whether maximum or otherwise, the inmate experience is shaped by several factors, including the *operation* of the prison. One central component of that operation is the “totality” of the organization.

As will also be discussed in Chapter 8 in reference to staff, Erving Goffman (1961) coined the term *total institution* to describe the nature of mental hospitals—and also prisons—in the United States in the 1950s. For a year he served as a staff member (athletic director’s assistant) and did ethnographic research in a federal mental health hospital in Washington, D.C. While avoiding sociable contact with staff, he immersed himself in



the inmate world as much as he could without being admitted to the hospital, and what he observed allowed him to learn a great deal about that kind of institution and about roles for staff and inmates.

Goffman (1961) defined a **total institution** as “a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life” (p. xiii). Another key component of this total institution is the defined social strata, particularly as they involves the inmates and the staff (Goffman, 1961, p. 7). Specifically, there are formal prohibitions against even minor social interactions between these two groups in a total institution, and all of the formal power resides with one group (the staff) over the other group (the inmates).

This definition is directly applicable to prisons even today, though it more aptly described both prisons and jails of the past. For prison inmates, the institution is where they live and often work with people who are like themselves not only in terms of criminal involvement but also largely in terms of their social class and other background characteristics. Although there is some ability to visit with others, the mode and manner of this contact with the outside world are quite limited in prisons and also dependent on the security status of the institution (e.g., whether it is a work release facility or a maximum-security prison). The formal rules of prisons also closely control inmate behavior and movement. As was already mentioned, another key formal attribute of total institutions governs interactions between staff and inmates. Simply put, staff are to restrict such interactions to business only and are to parcel out information only as absolutely necessary. As Goffman (1961) put it, “Social mobility between the two strata is grossly restricted; social distance is typically great and often formally prescribed” (p. 7).

How do these aspects of total institutions affect the lives of inmates? In the 1950s, Goffman (1961) believed that total institutions had the effect of debilitating their inmates. As he saw it, upon entrance into the institution, the inmate may become *mortified*, or suffer from the loss of the many roles they occupied in the wider world (known as **mortification**; see also Sykes, 1958). Instead, only the role of “inmate” is available, a role that is formally powerless and dependent.

In addition, though each person entering a prison *imports* aspects of their own culture from the outside (known as **importation**), to some extent inmates are likely to experience **prisonization**, whereby they adopt the inmate subculture of the institution (Carroll, 1974, 1982; Clemmer, 1940/2001). Couple this mortification and subsequent role displacement with the prisonization into the contingent inmate subculture and you have the potential for the new inmate to experience a life in turmoil while they adjust as well as some difficulty when reentering the community.

## Pains of Imprisonment

Part and parcel of this inmate world are what Gresham Sykes (1958), on the basis of his research in a New Jersey maximum-security prison, described as the **pains of imprisonment**. Such pains include “the deprivation of liberty, the deprivation of goods and services, the deprivation of heterosexual relationships, the deprivation of autonomy, and the deprivation of security” (p. 63). Inmates in a prison (or jail) are not free to leave or even to move about the institution without the permission of their keepers (staff). But for Sykes, the worst of the liberty restrictions meant that inmates were cut off, for the most part, from family and friends. They cannot call whomever they like or visit with whom they want when they wish to do so. As many inmates are functionally illiterate and poor, they also have difficulty writing letters and affording the postage. This deprivation of contact with family members, and particularly their children, is a severe pain that many inmates experience when, as an artifact

**Total institution:** “A place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life” (Goffman, 1961, p. 6).

**Mortification:** Process that occurs as inmates enter a prison and suffer from the loss of the many roles they occupied in the wider world (Goffman, 1961; Sykes, 1958). Only the role of inmate is available—a role that is formally powerless and dependent.

**Importation:** Occurs when inmates bring aspects of the larger culture into the prison.

**Prisonization:** Adoption of the inmate subculture by inmates.

**Pains of imprisonment:** Perils described by Sykes (1958) as the “deprivation of liberty, the deprivation of goods and services, the deprivation of heterosexual relationships, the deprivation of autonomy, and the deprivation of security” (p. 63).

of their incarceration, they are unable to have regular interactions with their own children or to have any control over their children's environment on the outside (see more about this in Chapter 10 on gender; also see Gray, Mays, & Stohr, 1995; Stohr & Mays, 1993).

As to the pain related to goods and services, inmates are required to surrender all of their property upon entrance into the prison system and, in most cases, they cannot have it back until they leave. The property they are allowed to legally possess is very limited and monitored closely by staff. Relatedly, they cannot choose who will cut their hair or where they will get their nails done, nor can they choose their doctors or schedule visits. As Sykes (1958) noted—and this is perhaps even truer today in many prisons because of court intervention—most inmates' basic needs for food, shelter, space, and health care are met, yet it is the perception of deprivation in this material society that matters, too.

In light of the greater knowledge we have regarding the sexual orientation of human populations today as opposed to 60 years ago, we might amend Sykes's (1958) "deprivation of heterosexual relations" to a more generalized *deprivation of sexual relations*. An inmate's access to significant others in the wider world is limited to visits during which touching is only minimally sanctioned (e.g., a brief kiss or hug at the beginning of the visit). Although much is made of conjugal visits for prison inmates, in reality there are few prisons that allow these, and only a minuscule number of inmates in those prisons are granted access to such visits. A very few prisons do allow conjugal visits between inmates and their gay or lesbian partners. Although, as with the free population, 3% to 5% of prison inmates are likely to be gay or lesbian (see a brief discussion related to this topic later in this chapter), sexual intimacy between same-sex inmates is against the rules, though it does occur. It is illegal as well between same- and different-sex staff and inmates.

Autonomy for inmates is also severely restricted in the rule-bound prison world. When, how, where, and with whom they live, eat, work, and play are all determined by the rules of the institution. Inmates can make few choices regarding their lives while imprisoned, and all of those choices are shaped by their imprisonment.

Because of their imprisonment, inmates are thrown together with others, some of whom are aggressive and violent or become so in a prison environment, perhaps particularly in the maximum-security environment Sykes was studying. Because of the circumstances surrounding incarceration in a supermax—and also in medium- and minimum-level prisons, though to a lesser degree—inmates are deprived of their security, a basic human need as defined by Maslow (1943/2001). Quoting an inmate in his study, Sykes (1958) repeated that "the worst thing about prison is you have to live with other prisoners" (p. 77), meaning that even if one is prone to violence or manipulation—termed an "outlaw" inmate by Sykes (p. 77)—which not all inmates are, it is unnerving for even an outlaw inmate to have to live with others who are also so inclined. This lack of security, according to Sykes, can lead to anxiety on the part of inmates and the belief that at some point they, whether an outlaw among outlaws or not, are likely to be forced to fight to defend themselves or to submit to the abuse of others.

Sykes (1958) argued that these pains, though not physically brutalizing, have the cumulative effect of destroying the psyche of the inmate. To avoid this destruction, inmates in prisons may be motivated to engage in deviance while incarcerated as a means of alleviating their pain. So bullying other inmates, being involved in gangs, buying items through the underground economy, and engaging in same-sex sexual activity might all be motivated in fact by the need for some autonomy, liberty, security, goods and services, and sexual gratification (Johnson, 2002). Extrapolating from this point, the extent to which female inmates form pseudofamilial relationships may be a means of alleviating the pain experienced because of the separation from children and other close family members (Owen, 1998).

One final note regarding the pains of imprisonment is this: Sykes (1958) did not believe that all inmates experienced or perceived these pains in the same way. He acknowledged that the way in which one experiences these pains does vary some by individual and by

background as well as by the prison in which one is incarcerated. However, he argued that at least among the inmates he studied, there was a consensus that “life in a maximum security prison is depriving or frustrating in the extreme” (p. 63).

## The Prison Subculture

### LO 7.5 Explain what prison gangs are and why they exist in prisons.

**Prison subculture**, or a subset of the larger culture, with its own norms, values, beliefs, traditions, and even language, tends to solidify when people are isolated from the larger culture and when members have regular and intense contact with one another for an extended period of time. In other words, it would appear that the total institutional nature of prisons provides the perfect environment for an inmate subculture to form. Accordingly, the degree to which a correctional environment fits the definition of a total institution will determine the extent to which a client subculture exists. It is also possible that the shared experiences of deprivation, as detailed by Sykes (1958), can further solidify a subculture for inmates.

Thus, research on inmate subcultures has tended to focus on prison inmates and specifically on medium- or maximum-security prison inmates. This is not to say, of course, that those in a jail or a minimum-security prison do not have distinguishable “norms, values, beliefs, and language” that set them apart from the wider community, but it is much less likely. By definition, the longer inmates are in an institution, associating with others like them, and the more “total” the institution is in its restrictions on liberty and contact with “outsiders,” the more subjected inmates are to the pains of imprisonment and the more likely they are to become prisonized in that they adopt the inmate subculture.

Indicators of such a subculture, as identified by prison researchers, include prescribed values and defined roles for inmates (Clemmer, 1940/2001; Owen, 1998). For instance, Clemmer in 1940 (reprinted in 2001) broadly defined criminal subcultural values as including “the notion that criminals should not betray each other to the police, should be reliable, wily but trustworthy, coolheaded, etc.” (p. 7). Also emphasized among these values are ultra-masculinity and displays of toughness as well as solidarity among inmates and against staff (Lutze & Murphy, 1999; Sykes, 1958). Although these researchers identified these roles for prison inmates more than 50 years ago, current researchers still see them in prisons of today. Of course, any given inmate might be expected to change roles from time to time during their incarceration or to engage in more than one role simultaneously.

These roles are played out in the prison in a criminal subculture, which becomes a “convict subculture” for Clemmer (1940/2001) when such inmates seek power and information so they might get the goods and services they desire to alleviate those pains of imprisonment. Owen (1998) noted that some women engage in a version of this subculture and these roles, although this might be tempered by the relationships they have and the goods and services they need (more about the different roles female inmates adopt will be covered in Chapter 10). Notably, both Clemmer and Owen found that a significant portion of inmates in the male and female prisons they studied were not at all interested in being involved in the convict subculture or the “mix” of behavior that can lead to trouble in prisons. Such inmates, in the argot identified by Sykes (1958) and Sykes and Messinger (1960), were “square johns.” These inmates either chose to not connect to the inmate subculture or held on to more traditional and legitimate values from the larger culture.

More recent research confirms that inmates are not as solidly aligned against staff as the early works would indicate (Hemmens & Marquart, 2000; Jacobs, 1977; Johnson, 2002; Jurik, 1985a; Jurik & Halemba, 1984; Lombardo, 1982; Owen, 1998). Many inmates identify with free-world values as much or more than inmate values and inmate subculture.

Other recent researchers and writers on prisons (see, e.g., Conover, 2001; Johnson, 2002; Rideau, 2010) have found that staff and inmates engage in more personal and informal

**Prison subculture:** Norms, values, beliefs, traditions, and even language that are distinctive to prisons.

relationships with each other than is formally acknowledged, a reality that Sykes (1958) noted as well. The diversification of staff by race, ethnicity, and gender has changed the old dynamic between staff and inmates, making staff less dissimilar to inmates and the inmate world less masculinized than it was previously, perhaps continuing to break down some of the more formal barriers between staff and inmates in a total institution. Research, observations, and personal experience as, respectively, a teacher, student–inmate, attendee, and governor (warden) in a male prison in the United Kingdom, led Crewe, Warr, Bennett, and Smith (2014) to theorize that the emotionally restrained “tough guy” depictions of inmates in prisons does not fully describe the “emotional geography” of such places. Rather, these researchers claimed there are certain subcultural zones where a wider range of emotions is allowed because the circumstances of such places allow it. One such zone in the prison is the visiting room, where interactions with families require more open emotional exchanges and allow shows of vulnerability by inmates. Classrooms and chapels were other areas where comradeship and the sharing of ideas and even personal experiences and beliefs can break down the typical emotional barriers that are present in prisons.

### Gangs and the Prison Subculture

**Gangs:** Groups of people with similar interests who socialize together and support one another but who also engage in deviant or criminal activities. Gangs have a hierarchical organizational structure and a set and often strict code of conduct for members.

**Gangs**, or groups of people with similar interests who socialize together and who may engage in deviant or criminal activities, are a common phenomenon in jails and prisons. According to the U.S. Department of Justice (DOJ; 2015) website, gangs in prisons and jails are by definition engaged in criminal activities and are connected through members and criminal involvement with communities. Prison gangs have a hierarchical organizational structure and a set and often strict code of conduct for members. The DOJ (2015) reported the following:

Prison gangs vary in both organization and composition, from highly structured gangs such as the Aryan Brotherhood and Nuestra Familia to gangs with a less formalized structure such as the Mexican Mafia (La Eme). Prison gangs generally have fewer members than street gangs and are structured along racial or ethnic lines. Nationally, prison gangs pose a threat because of their role in the transportation and distribution of narcotics. Prison gangs are an important link between drug-trafficking organizations (DTOs), street gangs, and OMGs [outlaw motorcycle gangs], and are structured along racial or ethnic lines. Prison gangs typically

are more powerful within state correctional facilities rather than within the federal penal system. (p. 1)

Correctional scholars and practitioners believe that gangs are so ubiquitous in corrections because they meet the needs of inmates for security, goods and services, power, and companionship. They lessen the pains of imprisonment by providing protection in numbers and the potential to respond with force to any threats an inmate might face. They are conduits for the supply of illicit goods such as tobacco, drugs, alcohol, and sex in prisons and jails. They also provide some substitution for the diminished relationships that inmates have with those family and friends on the outside.



Getty Images/Bob Chamberlin

**Photo 7.4** Mexican mafia tattoo on a member. Such tattoos provide a ready signal to other inmates and to staff what gang an inmate is a member of.



The history of gangs in prisons is a long one. Sykes (1958) noted that the first investigation of the New Jersey State Prison, in 1830, found what they called a “Stauch-Gang” that was firmly entrenched there and engaged in terrorizing both inmates and staff while also planning escapes (p. 92). Ward and Kassebaum (2009) also pointed out the importation and exportation of gang-related criminal activity between state and federal prisons and the streets in the 1920s. In his history of the Stateville Prison in Illinois, J. B. Jacobs (1977) observed that prison gangs have existed in that state for decades as imports from the streets of Chicago, though he thought their ferocity and strength increased in the late 1960s and early 1970s.

The prison gangs of today are almost too numerous for correctional authorities to keep track of, but they do tend to have in common a criminal focus. According to the Florida Department of Corrections (FDOC; 2014), most prison gangs these days recruit their membership on the basis of ethnicity or race. Both the federal government and the FDOC report that gangs are much stronger in male prisons, and gangs will conspire with others, even rival gangs, to provide protection and increase their criminal reach (e.g., the Aryan Brotherhood might sometimes work with members of the Black Guerrilla Family—despite the racial hatred of their members for each other—if it will increase their drug sales). The FDOC website identifies the six major prison gangs in the United States as follows:

1. Neta (Puerto Rican American/Hispanic)
2. Aryan Brotherhood (White)
3. Black Guerrilla Family (Black)
4. Mexican Mafia (Mexican American/Hispanic)
5. La Nuestra Familia (Mexican American/Hispanic)
6. Texas Syndicate (Mexican American/Hispanic)

Because of their underground engagement in prison crime and the rivalries that develop between gangs, even some of those gangs with members of the same ethnic backgrounds (e.g., the Mexican Mafia and La Nuestra Familia) are sworn enemies. Moreover, both the Mexican Mafia and La Nuestra Familia are rivals of the Texas Syndicate. Because of these rivalries, jails and prisons constantly must consider gang membership in classification decisions. Whether it is fights over turf, protection of members, or some other issue, the presence of gangs and gang activities leads to disruption and even murder in prisons. For instance, according to the FDOC (2014), the Aryan Brotherhood disruptions of prisons include the following:

- The main activities of the Aryan Brotherhood are centered on drug trafficking, extortion, pressure rackets, and internal discipline.
- Prison activities include introduction of contraband, distribution of drugs, and getting past facility rules and regulations.
- Traditionally, targets have been non-gang-affiliated inmates and internal discipline.
- From 1975 to 1985, members committed 40 homicides in California prisons and local jails as well as 13 homicides in the community.
- From 1978 to 1992, Aryan Brotherhood members, suspects, and associates in the federal system were involved in 26 homicides, 3 of which involved staff victims.



Because of the threat prison gangs present for the security of the institution and the safety of staff and inmates, managers try to control or suppress gang involvement in their facilities. The first step in this process is the identification of gang members and their leaders. Once identified, correctional staff will try to separate members and leaders from each other. However, given the crowding of many prisons and prison systems, it is almost impossible to always use the separation tactic as a means of control and suppression. Therefore, what staff are often left with is the monitoring of gang activity and, as much as possible, punishing or neutralizing gang members and reducing their impact on a given system.

## Violence

**LO 7.6** Identify the reasons why violence, riots, and sexual assaults occur in prisons and be familiar with some strategies for their reduction.

### Why Prisons Are Violent

Violence is endemic to prisons. There is violence in prisons because incarcerated people are there unwillingly; they are forced to do things they normally would not do, with people they may not like; and, most important of all, some of them are inclined to be violent. According to BJS researcher Carson (2020, p. 21), as of 2017 more than half (56%) of state prisoners were incarcerated for violent offenses. Maximum- and medium-security prisons tend to hold more inmates convicted of violent offenses or who have problems with following the rules in prisons, and as a result they are more likely to experience violent outbursts. Research by Meade and Steiner (2013) in which they used a representative national sample of adult male inmates indicated that inmates who were exposed to violence or who were physically victimized prior to incarceration were likely to have more problems with adjustment while incarcerated. The researchers also found that abuse as a child—not an uncommon experience for many inmates—was associated with maladjustment while in prison. Add to this mix the presence of gangs and their willingness to use force to achieve their criminal ends and the possibility of violence in prisons rises.

### The Amount of Violence

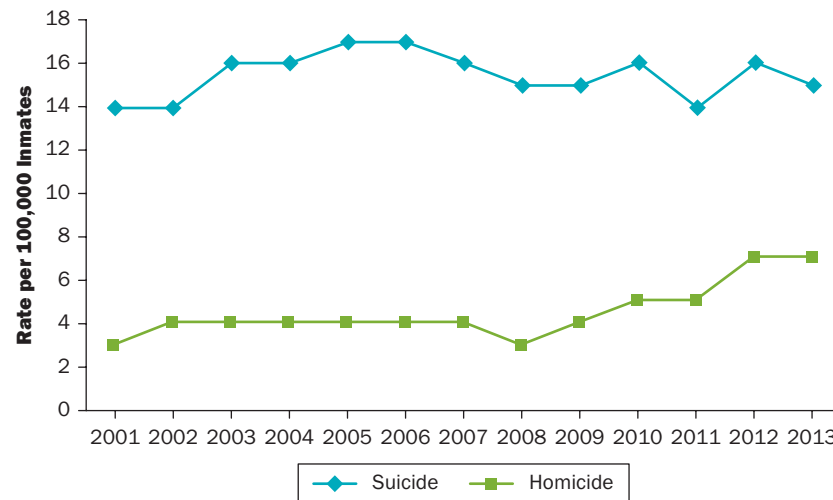
With the exception of deaths due to violence, it is difficult to determine the exact amount of violence in prisons. Correctional institutions tend to underreport its incidence, and there is variation across facilities about what constitutes violence (Byrne & Hummer, 2008). Also, inmates are reluctant to report the violence they experience or witness to staff. With these caveats regarding official statistics in mind, using data collected from correctional institutions around the United States, Stephan and Karberg (2003) found that the number of assaults on staff and inmates increased in state and federal prisons from 1995 to 2000, and the size of the increase was greatest for private institutions. They noted, however, that the rate of assaults on staff (or the number of assaults per staff person) decreased slightly during this time period. Based on the BJS data presented in Figure 7.2, we also know that both the suicide and homicide rates in jails and prisons decreased from 1980 to 2003. However, more recent BJS data show that both homicides and suicides in prisons have been on the rise in recent years.

### Sexual Assaults

As was discussed in Chapter 5, on the basis of inmate surveys and official statistics, the amount of sexual violence in prisons and jails is becoming increasingly clear. The Prison Rape Elimination Act of 2003 (PREA) requires the BJS to collect data yearly on the amount

**FIGURE 7.2** Violence in Prisons and Jails, 2001–2014

Source: BJS (2016). Most recent data available.



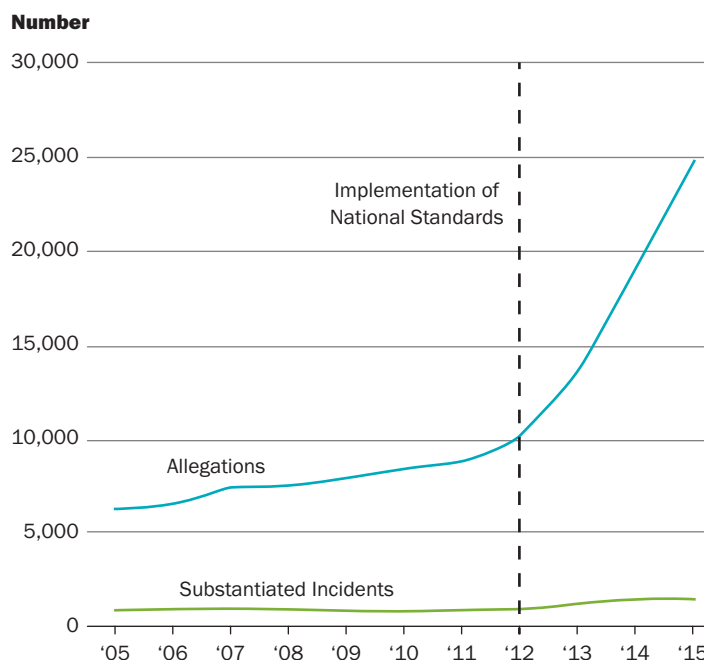
of prison rape that occurs. In 2018, this meant that a 10% sample of the existing jails, prisons, and community-based and juvenile facilities was included. The findings from this research aggregated for 2012 to 2015 (Rantala, 2018, p. 1) indicate the following:

- Correctional administrators reported 24,661 allegations of sexual victimization in 2015—nearly triple the number recorded in 2011 (8,768).
- The increase in allegations of sexual victimization from 2011 to 2015 coincided with the release in 2012 of the National Standards to Prevent, Detect, and Respond to Prison Rape.
- In 2015, an estimated 1,473 allegations were substantiated (determined to have occurred), up 63% from the 902 substantiated in 2011.
- Fifty-eight percent of substantiated incidents of sexual victimization in 2015 were perpetrated by inmates, while 42% were perpetrated by staff members.
- The number of allegations in prisons increased from 6,660 in 2011 to 18,666 in 2015 (up 180%).
- During the 3-year aggregated period of 2013 to 2015, there were an estimated 15,875 allegations of inmate-on-inmate sexual harassment, of which 2,426 (16%) were substantiated on the basis of completed investigations.

The allegations of victimization, harassment, and substantiation of same have all increased since the report provided by the BJS (2014, p. 1) covering the time period from 2005 to 2011. There was an expected and dramatic increase in allegations of sexual victimization in the covered correctional facilities once the DOJ published the national standards (see Figure 7.3, which illustrates this point). The national standards were designed to enhance prevention, detection, and response to rape. In other words, the standards were designed to assure inmates that they could report without fear of retaliation. The fact that “staff-on-inmate victimization accounted for 63% of the increase in allegations from 2011

■ **FIGURE 7.3** National Estimates of Allegations and Substantiated Incidents of Sexual Victimization in Adult Correctional Facilities, 2005–2015

Source: Rantala (2018). Most recent data available.



to 2015” would indicate that the national standards may have served this purpose (Rantala, 2018, p. 6). The overall rate of allegations of sexual victimization more than doubled from 2005 to 2014, from 2.83 to 8.37 per 1,000 inmates, and then increased to 11.04 for 2015 when sexual harassment was added to the mix. In earlier PREA findings, private prisons were separated out (and tended to have more allegations), but in the latest report they are collapsed into public prison and jail categories.

Although it might be a myth that all—or even most—who enter a prison will be raped, research by the BJS indicates that from 2012 to 2015, fully 67,168 inmates in prison and jails alleged they were victims of sexual victimization (Rantala, 2018, p. 7). And it is true that members of certain groups are much more likely to be raped in prison than others. As was discussed in the section on jails, women, LGBTQ+ inmates, and people with mental illnesses are much more likely to be victims of sexual assault in prisons and jails than are other inmates.

## Rioting

Rioting is another form of violence. It is group violence. Rioting presents a direct threat to the security of the institution and the inmates in it and is often met with reciprocal force by the staff and administration of the prison. Prison riots have existed as long as there have been prisons—in fact, *before* there were prisons. Recall the so-called Newgate Prison of Connecticut, where inmates were confined to a copper mine for much of their incarceration. Inmates at Newgate repeatedly rioted throughout the history of its operation. Indeed, virtually every maximum- and medium-security



## In Focus 7.1

### ALABAMA PRISONS VIOLATE THE CONSTITUTION

In an April 2019 report titled “Investigation of Alabama’s State Prisons for Men” by the Civil Rights Division of the DOJ, and a letter that accompanies the report penned by the assistant attorney general for civil rights and three U.S. attorneys, it is asserted that there is reasonable cause to believe the conditions of confinement in the 12 men’s prisons in Alabama violate the Eighth Amendment prohibition of “cruel and unusual punishment.” The authors of the DOJ letter, addressed to Alabama governor Kay Ivey, stated that they believe Alabama prisons fail “to protect them [inmates] from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse . . . by failing to provide safe conditions” (Dreiband, Town, Franklin, & Moore, 2019, p. 1). The authors claimed the prisons are unsafe for correctional officers too and noted that the “violations are exacerbated by serious deficiencies in staffing and supervision and overcrowding” (p. 1). In the full report, the DOJ notes that in 2017 the homicide rate in Alabama prisons was 8 times that of the national average for prisons (and they believe that the number of murders is underreported); the prisoner-on-prisoner violence rate is high and rose steeply over the past 5 years; sexual abuse is rampant and underreported; and victims or potential victims are often punished when they step forward (U.S. Department of Justice, Civil Rights Division, 2019, pp. 6, 13, 34). Staff assaults are also routine, making work in the prisons less desirable and more dangerous (U.S. Department of Justice, Civil Rights Division, 2019, p. 27). The DOJ found that prisons were staffed at only 20% of allocated positions, and

overcrowding was, on average, at 182% (one prison was higher than 300%; U.S. Department of Justice, Civil Rights Division, 2019, pp. 6, 8–9). Furthermore, inmates who complained or asked for protection were punished, and medical care was not always supplied even when inmates were suffering from life-threatening injuries or illnesses. The prisons were awash in drugs and weapons. Inmates and their families were victims of extortion by other prisoners. In its report, the DOJ noted that the Alabama Department of Corrections (ADOC) had been aware of these kinds of problems in their prisons since at least the mid-1970s and had failed to make substantial progress in addressing them. After this latest investigation, the DOJ recommended a number of short- and long-term goals that centered on more staffing, substantial reductions in the number of inmates, and the implementation of policy changes the ADOC might undertake to forestall a consent decree. In a *New York Times* article on the DOJ report, the authors cited a statement issued by the Alabama governor in reaction to the DOJ report, claiming that they were already focused on solutions and that they would work closely with the DOJ to ensure that real reform happens (Benner & Dewan, 2019). In that same article, a leading lawyer from the Southern Poverty Law Center (a frequent civil litigant of the ADOC) expressed skepticism that such reform will really happen; however, given the singular focus of state government to build themselves out of the overcrowding rather than addressing the extensive list of other problems documented in the DOJ report.

prison with any longevity has experienced some form of rioting by inmates. Inmates engage in rioting—and violence in general—to achieve some end, such as better food or housing or power, or inmates might riot out of anger or frustration. When violence is used to achieve some end, it is known as *instrumental violence*, but when it is just an angry outburst, it is known as *expressive violence*. Of course, inmates engaged in violence or a riot could be involved for both instrumental and expressive reasons. An inmate who wants to protest the overcrowding of their institution may riot to let the world know about the conditions of confinement (instrumental violence), but they might also be angry about the effect such crowding has on housing and the ability to sleep and become violent as a means of expressing it. When enough inmates engage in this violence together, it is called a riot.

**Attica Prison riot:** The bloodiest prison riot in American history began with a spontaneous act of violence by one inmate against an officer who had tried to break up a fight. Violence quickly spread because inmates were frustrated and angry about the overcrowded conditions, lack of programming, and other conditions of confinement. Charges of racism were made by the mostly African American inmates regarding their treatment by the mostly White staff. Negotiations broke down, resulting in the prison's being stormed by the state police and by correctional staff. Ten hostages and 29 inmates were dead or dying when the prison was secured. Another 80 inmates had gunshot wounds.

**New Mexico State Penitentiary riot:** A riot took place over the conditions of confinement and crowding, which were at very high levels. Repeated warnings were given that a riot would occur, but administration and staff failed to adequately prepare, resulting in the state's eventually retaking the prison. Thirty-three inmates were killed by other inmates over 3 days. Numerous inmates, along with staff hostages, were beaten or raped. Millions of dollars in damage was done (Useem, 1985; Useem & Kimball, 1989).

The two most notorious instances of inmate rioting to date occurred in the **Attica Prison riot** of 1971 and the **New Mexico State Penitentiary riot** of 1980. At Attica, the riot began with a spontaneous act of violence by one inmate against an officer when the officer tried to break up a fight. The violence spread when other inmates became involved the next day to avenge the punishment of the two fighting inmates (Thompson, 2016). The riot also spread because inmates were frustrated and angry about the overcrowded conditions and lack of programming, among other problems with the conditions of confinement; even showering and toilet paper were rationed. There were charges of racism by the mostly African American inmates regarding their treatment by the mostly white staff at Attica as well (Useem & Kimball, 1989). Add to this the student protests against the Vietnam War and the civil rights movement that had roiled the country outside the Attica Prison walls in the late 1960s and early 1970s, and it was clear why there was tension within those walls.

Because the prison staff were unprepared to respond to a riot, the inmates easily took over Attica, burning some buildings and eventually congregating in one yard with their 40 hostages (PBS, 2000; Thompson, 2016). In the negotiations between the inmate leaders and the administration, the inmates asked for better food, health care, and the ability to practice their religion. A number of observers, composed of politicians and media members, tried to intervene in the negotiations to no avail. Some inmates killed three other inmates and one hostage, which also impaired the ability to negotiate. Moreover, Governor Nelson Rockefeller, who was considering a run for the White House at the time, did not want to appear soft on crime.

In the end, the inmates and administrators could not come to an agreement (the inmates wanted amnesty for the rioters), and eventually, on Governor Rockefeller's orders, the prison was stormed by the state police and by correctional staff. Tear gas was dropped from police helicopters into the occupied yard, and the inmates and their hostages were indiscriminately fired upon with shotguns by the staff and police. As a consequence, 10 hostages and 29 inmates were dead or dying when the prison was secured, and another 80 inmates had gunshot wounds (Useem & Kimball, 1989). It was the bloodiest prison riot in American history. Inmates, even injured ones, were then beaten and humiliated (forced to stand naked in the yard for hours), and medical care was delayed or denied.

The state indicted 60 inmates for a number of crimes including sodomy and murder arising out of the riot, but only 8 inmates were convicted (Gonnerman, 2001, p. 1). Years of legal wrangling eventually led to an \$8 million award by the state of New York to the inmates who were beaten or tortured after the riot (PBS, 2000; Thompson, 2016). In 2005, the state paid out another \$12 million to the survivors and families of employees killed in the aftermath of the riot (Kirshon, 2010; Thompson, 2016).

In 1980, the New Mexico State Penitentiary also exploded in a riot over the conditions of confinement, which were deplorable, and crowding, which was at epidemic levels. Despite repeated warnings that a riot was going to occur, the administration and staff failed to adequately prepare. When a staff member slipped up in a security measure when locking down a dormitory for the night, he was grabbed, along with his keys, and inmates quickly advanced through the prison, taking control of several cellblocks, including the pharmacy and shops. Drugs and weapons were readily available as a result, and brutal inmate-on-inmate violence ensued. Some of this violence was particularly focused on inmate snitches and child molesters, who were housed in a separate cellblock. Rioting inmates broke into this cellblock, and gruesome and vicious assaults and murders of these inmates occurred. The state eventually retook the prison without the resulting bloodshed that happened at Attica. However, over the course of 3 days, 33 inmates were killed by other inmates. Numerous other inmates, along with staff hostages, were beaten or raped, and millions of dollars in damage was done (Useem, 1985; Useem & Kimball, 1989). In the aftermath of this riot, New Mexico was sued several times. The state did build a number of medium- and minimum-security prisons following the riot, which eased the overcrowding at the main facility.



More recent riots, or group disturbances, include a 2013 hunger strike by 30,000 inmates in California for “repressive conditions” and in 2015, when Texas inmates shut down a facility over their treatment (Thompson, 2016, p. 570).

More recently, in April 2020 and in response to the news that five staff and six prisoners had tested positive for COVID-19, more than 200 inmates rioted at the maximum-security Monroe Prison in Washington State. The inmates felt they were not being adequately protected from catching the virus (e.g., allowed to social distance or provided with protective equipment or products such as masks, soap, and disinfectant) (Quinlan, 2020, p. 10) and threatened to take hostages and set fires. This riot was quelled within a day through the use of pepper spray and sting ball grenades by staff. The state Supreme Court of Washington heard a case later in the month related to the inmates’ complaints and ordered the immediate release of nonviolent and vulnerable inmates, however (Camden, 2020).

## Strategies to Reduce Violence

There are some scholars and social commentators who argue that prisons and jails are naturally violent institutions, essentially for the same reasons we mentioned earlier that can make them incubators for violence (e.g., they hold violent people involuntarily). But there is evidence that the degree of violence differs markedly from institution to institution and from group to group (Beck, Berzofsky, Caspar, & Krebs, 2013). If this is true—that one prison or jail is more or less violent than comparable institutions holding similar types of inmates (i.e., security level and inmate history of engaging in violence)—then it is implied that it is not that violence is endemic to prisons or jails per se but it is how the institution operates that creates and fosters violence (note the In Focus 7.1 discussion of the conditions that have led to violence at the men’s prisons in Alabama). Therefore, it occurs to us that there are strategies that might be used to reduce violence, such as the following:

- *Professional subculture*: Promote a professional environment in which staff are well trained, well educated, and versed in ethical behavior. Promote those up the career ladder who model these values for the institution (see Stohr & Collins, 2014).
- *Personnel*: Hire potentially professional people (people with education and ethical values), train them well, and pay them a wage that will entice them to stay. Training should include the latest research on how to spot and reduce violence in corrections (see Rembert & Henderson, 2014).
- *Supervision*: Promote ethical supervisors who have proved their abilities on the job. Value and facilitate further training, education, and development for them. Then keep the span of control (the number of persons a supervisor is responsible for) within reason so that supervisors can be aware of and influence what is going on around them. Discipline or fire those who violate ethical standards of the institution (see Stohr & Collins, 2014).
- *Classification*: Pay careful attention to inmate histories and proclivities for violence and separate inmates on the basis of this intelligence. Neutralize criminal gangs so their influence does not heighten the level of violence in the facility. As much as possible, classify inmates so their needs can be met (e.g., work training, proximity to family and their communities, treatment to address their needs; see Mears, Stewart, Siennick, & Simons, 2013).
- *Facilities that are not overcrowded*: Crowding reduces the ability of staff to effectively supervise, meet inmate needs, and maintain control of the institution. It also can be linked to prisoner violence (see the discussion of the New Mexico State Penitentiary riot and the DOJ report on Alabama prisons).

- *Activities*: Provide opportunities for inmates to stay busy in prosocial activities like work, education, treatment, recreation, art, religious engagement, or niches where they are more likely to experience prosocial values. This will benefit them and their communities. Also provide opportunities for inmates to use their talents and abilities (see the discussion of mature coping and niches that follows [Johnson 2002], and see also research by Rocheleau, 2013; Wooldredge & Steiner, 2014).
- *Formal grievance procedures*: Ensure that there are formal grievance procedures in place so inmates can report on perceived deficiencies in the operation of the facility and vent their concerns. Just having the ability to vent and knowing that one is heard can often be enough to alleviate anger and thus violence. Grievance procedures also provide the opportunity for inmates to report on real deficiencies in the prison operations (see Rembert & Henderson, 2014).
- *Ombudsman*: Larger facilities or prison or jail systems may be able to staff an ombudsman position; such a person can investigate serious complaints by staff or inmates and work to resolve them.
- *Open architecture*: When building a new jail or prison or when significantly remodeling one, try to improve the openness of the facility so that sight lines are clearer in living units, as violence is more likely to occur when it cannot be seen (see the discussion of podular or direct supervision jails in Chapter 5, and also see research by Wooldredge & Steiner, 2014).
- *Official reporting*: Support the official reporting of violence to auditors at the local, state, or federal level. Note the discussion of PREA in this chapter and the chapter on jails (Chapter 5) and the requirement of reporting sexual abuse and assaults in prisons and jails. Sometimes jail and prison managers do not know that their facility is an outlier in terms of the amount of violence that occurs there. Having official reports gets this information out into the open and makes it more likely that there will be efforts to reduce the violence in facilities that have more of it.
- *Policymakers and the public*: Keep policymakers and the public apprised of the amount of violence that occurs and why it occurs and enlist their support and assistance in solutions that would reduce it.

### MATURE COPING

Prison violence, whether committed by individuals or groups of rioters, occurs in part because some inmates are not capable of interacting, or do not know how to interact, with others without violence. In his research on corrections, Johnson (2002) noticed that despite the mortification, prisonization, and pains experienced to different degrees by incarcerated individuals, some were able to adjust prosocially, even to grow, in a prison setting. Although this was the exception rather than the rule, he noted that some inmates develop another means of adjusting. This alternative means of handling incarceration—or supervision in the case of probationers and parolees—is called **mature coping**. Johnson (2002) identified and defined the following:

**Mature coping:** Occurs in prisons when the inmate deals “with life’s problems like a responsive and responsible human being, one who seeks autonomy without violating the rights of others, security without resort to deception or violence, and relatedness to others as the finest and fullest expression of human identity” (Johnson, 2002, p. 83).

Mature coping means, in essence, dealing with life’s problems like a responsive and responsible human being, one who seeks autonomy without violating the rights of others, security without resorting to deception or violence, and relatedness to others as the finest and fullest expression of human identity. (p. 83)

As indicated by this definition, the offender needs to learn how to be an adult with some autonomy in an environment where formally the individual has little power (although the

informal reality may be different), and their status is almost subhuman by wider community standards. Moreover, offenders must accomplish this feat without doing violence to others—though Johnson (2002) allowed that violence in self-defense may be necessary—and they need to exercise consideration of others in their environment.

Johnson (2002) noted that mature coping is relatively rare among the inmate population for a number of reasons. He argued that inmates are typically immature in their social relations to begin with, which of course is one of the reasons they are in prison in the first place. Because of impoverishment, poor or absent or abusive parenting, mental illness, or schools that fail them or that they fail, offenders enter the criminal justice system with a number of social, psychological, and economic deficits. They are often not used to voluntarily taking responsibility for their actions as one would expect of “mature” individuals, nor are they typically expected to “empathize with and assist others in need,” especially in a prison or jail environment (Johnson, 2002, p. 93).

Second, Johnson (2002) argued that for inmates to maturely cope, it is helpful if they are incarcerated in what he termed a *decent prison*. Such a facility does not necessarily have more programming, staffing, or amenities than the norm, though he thinks it might be helpful if it did; rather, such an institution or program would be relatively free of violence and would include some opportunities so that inmates might find a niche to be involved in. For inmates to find this niche, however, decent prisons need to include some opportunities for inmates to act autonomously.

Being secure from violence, like autonomy, is basic to human development. In fact, according to Maslow (1961/1998), if the security need is not fulfilled, it will preoccupy offenders and motivate them to engage in behaviors (e.g., bullying or gang activity) that they normally might avoid if they were not feeling continually threatened (Johnson, 2002). Then, assuming the offender perceives that they are relatively safe, the facility needs to offer prosocial activities, including work, school, athletics, religious services, treatment, or art programs, that provide some sort of means for positive self-value reinforcement. Such places and activities were termed *niches* by Johnson, and the opportunities they afford provide redress for the mortification and pains that offenders, particularly those who are incarcerated, experience.

### SOCIAL SUPPORT

Social support is a necessary element to successful existence in this world. Humans, for the most part, are social animals in need of the assistance of others, such as families, friends, neighbors, schools, religious services, nonprofits, and governments, to grow and thrive. Inmates in prisons and jails perhaps need more social support to succeed than most Americans. They usually come from poor backgrounds and have limited education, they have few job skills, and their socialization in prosocial behavior may have been lacking. Upon release they will be dependent on family and friends, should they be lucky enough to have some, who are stretched financially and emotionally themselves. Former inmates will leave the prison relatively unskilled, often with only a GED or less, and the stigma of being an ex-con. They will have financial obligations for their children or for fines imposed as part of their sentence, and often they will have to pay for their own supervision in the community. Their needs will be multifaceted and numerous, and to succeed they will depend on private and public sources of support.

Lin (1986) defined social support as “the perceived or actual instrumental and/or expressive provisions supplied by the community, social networks, and confiding partners” (p. 18). Cullen (1994) modified this definition to include both formal and informal delivery of this support. Instrumental support is material and includes the exchange of goods or money. Expressive support is more emotional and is the kind supplied by family and close friends. It is thought that the greater degree to which inmates experience social support, whether instrumental or emotional, from whatever source while in prison, the more likely



## Perspective From a Practitioner

**MICHAEL KLEIN, CORRECTIONAL OFFICER**

**Position:** Correctional officer

**Location:** Indiana Department of Corrections,  
Wabash Valley Correctional Facility

**Education:** PhD in criminal justice and  
criminology

### What is your previous experience in criminal justice?

I have worked as a juvenile correctional officer and in private security and social services.

### What are the duties and responsibilities of a correctional officer?

Maintaining the safety and security of the facility, mediating offender disputes, ensuring one's personal security, ensuring the safety of offenders, and ensuring the safety of one's fellow officers.

### What are the characteristics and traits most useful for a correctional officer?

Patience, courage, ability to work as a team member, understanding, ability to keep calm in disturbing situations, and a strong stomach.

### What was your typical workday as a correctional officer?

First, I would enter the facility and go through a security check. I would then arrive at my post, greet the prior shift of officers, and sign into the logbook. I had several different positions within the WVCF, and my activities varied by position. If I worked in a cell house, there would be the initial rush of complaints, concerns, and questions from the offenders. I would then try my best to maintain a smooth shift as 100 offenders milled freely about me. If I worked in segregation, there was less offender contact, but there were a lot more messy situations to contain. The daily activities of a correctional officer are both banal and uncertain. You never really know what to expect.

### What is your advice for future correctional officers?

Keep your cool, stay out of bad situations, and ask for help. Working in corrections is something that each officer has to figure out for himself or herself. Just be sure to think things through before making any rash judgments.

they are to change their behavior while incarcerated (fewer infractions of the rules and less violence) and in the larger community (reduced recidivism; Woo et al., 2014). Currently, the research in this area is more suggestive than solid, but if evidence indicates that social support reduces deviance of inmates while incarcerated and after being released, it would make sense for correctional institutions to develop ways to provide social support to inmates or allow others from the community to do so (Beare & Hogg, 2013; Hamilton, Kigerl, & Hays, 2013; Hochstetler, DeLisi, & Pratt, 2010; Lutze, Rosky, & Hamilton, 2013; Mears et al., 2013; Reisig, Holtfreter, & Morash, 2002).

## Older People and People with Physical and Mental Illnesses

**LO 7.7** State why care for aging inmates, physically ill inmates, and inmates with mental illnesses in prisons has become such an issue.

As mentioned in the chapter on jails, the number of older people in jails and prisons is increasing at an exponential rate. As America ages and mandatory sentences and other such laws lengthen sentences, correctional populations are graying. There are a number of collateral consequences that derive from this fact, most of them unintended:

- The cost of incarceration increases to accommodate the extra medical care needed for older people.
- Older inmates are less able to work in or for the prison, making them a further economic drain on the system.
- Older inmates may require housing that is separate from younger inmates who might prey on them.
- Older inmates, particularly those who have spent much or all of their adult lives in prisons, are less likely to have supportive family or friends waiting for them on the outside, which makes the development of a parole or reintegration plan even more challenging for them.

Because older inmates necessarily present such a drain on state and federal correctional budgets, it might make sense for states to rethink the sentencing laws and correctional practices that have led to the graying of prison populations nationally. To not do so is to support the continued exponential growth in correctional budgets at the expense of all other budget priorities.

The number of ill people incarcerated in America's prisons and jails has grown in tandem with the number of older inmates. And the number of older inmates (defined as 55 or older) rose by 400% from 1993 to 2013, constituting 10% of the prisoner population by 2013 (Carson & Sabol, 2016, p. 1). At this juncture, more than 33% of inmates in jails, 44% in state prisons, and 39% in federal prisons report illnesses more serious than a cold or the flu (Maruschak, 2008, p. 1; see also Maruschak, 2006). According to a 2004 survey of state and federal prison inmates by the BJS, the two most prevalent medical problems for prison inmates were arthritis and hypertension (Maruschak, 2008). Women and older inmates in prisons, as in jails, report more medical problems than do other inmates. Heart disease and suicide account for most of the deaths in jails, while cancer and heart disease claimed more than half of those who died in state prisons from 2011 to 2012 (Noonan & Ginder, 2013, p. 1).

The extent of medical care provided for such inmates depends on the jurisdiction, with some larger counties, some states, and the Federal Bureau of Prisons providing better care than other jurisdictions. According to the 2004 study, about 70% of state and 76% of federal prison inmates with medical problems reported seeing medical professionals at the prisons about their illnesses, and more than 80% reported receiving medical exams since their admission (Maruschak, 2008, p. 1). However, even in those jurisdictions that can afford to and do provide decent medical care, it is often minimal. Dentistry typically consists of pulling teeth rather than crowning or even filling them. Little preventive medical care is provided, and the common response to complaints is the provision of medication.

Most larger jails have sections devoted to their inmates with medical complaints. Larger prisons or prison systems often have buildings or whole institutions devoted to inmates with medical maladies. The staffing of such sections, buildings, or institutions again varies by jurisdiction and the ability and willingness to pay the high cost for qualified staff (Vaughn & Carroll, 1998; Vaughn & Smith, 1999). Working in a jail or prison medical facility is not usually the first choice of medical personnel, so it is not surprising that it might be hard to recruit and keep the best among them.

The number of inmates with mental illnesses has also grown in America's prisons, though not to the same extent as it has in jails (see Chapter 5). As jails became dumping grounds for people with mental illnesses after mental health hospitals closed in the 1970s, some of these inmates with chronic mental illnesses found themselves in a prison environment (Slate & Johnson, 2008).

The **deinstitutionalization of people with mental illnesses** in the United States came about as a result of the civil rights movement and the related effort to increase the

**Deinstitutionalization of people with mental illnesses:** Happened in the United States as a result of the civil rights movement and the related effort to increase the rights of people involuntarily committed to mental hospitals. It was also helped along by the development of pharmaceuticals that purportedly addressed the symptoms of some illnesses and by decreased federal funding for state hospitals devoted to people with mental illnesses.



rights of powerless people (Slate & Johnson, 2008). Too many people were civilly committed to mental health institutions for years without any legal recourse or protection, it was thought. In addition, the pharmaceutical company Smith, Kline, & French (now GlaxoSmithKline) pushed its drug Thorazine as a potential cure for some mental illnesses with state legislators who were eager to save money by closing mental health institutions (Slate & Johnson, 2008). As legal restrictions on civil commitment of people with mental illnesses spread across the country, and as state legislators believed the claims of the pharmaceutical company (which turned out to be unfounded), states and counties closed their mental health hospitals or reduced their capacities significantly. Congress passed the Community Mental Health Act in 1963, which ended much of the federal support for mental health hospitals. Instead, Congress was to fund less restrictive institutional alternatives, such as halfway houses, but outpatient facilities were either underfunded or shunted away by community members who did not want such facilities in their neighborhoods (Slate & Johnson, 2008). Thus, an unintended consequence of this deinstitutionalization movement was that there were few public services available in communities to assist the people with mental illnesses and their families. Jails, and then prisons, became the de facto mental health patient dumping ground.

Unfortunately, as with those who have major medical problems, most prisons and jails are poorly equipped and staffed to handle inmates with mental illnesses. There are difficulties in diagnosis, the management of people who do not understand how to behave in a prison, the programming and the development of appropriate prison employment, and the creation of reentry plans for these inmates (Slate & Johnson, 2008). Any treatment programming that is available has a long waiting list. Sometimes staff need to be concerned that these inmates require protection from predation; on the other hand, it may be necessary to keep an eye on the violent outbursts of the patients as they might injure others (Wood & Buttarro, 2013). Some studies link posttraumatic stress disorder with an assault history, propensity for revictimization, violent behavior, substance abuse, and mental illness, so it is no surprise that trauma-related treatments need to be available for those who have mental illnesses in prisons as well (Wood & Buttarro, 2013).

Needless to say, the funding needed to provide medical and mental health care to an aging and ill correctional population is cost prohibitive. However, as inmates are unable to access such services in communities because of their incarceration, these costs must be borne.

## LGBTQ+ Inmates

### LO 7.8 Recognize the need to respect the needs of LGBTQ+ inmates.

The true number of LGBTQ+ inmates in corrections is not known. According to Gary Gates (personal communication, March 14, 2011), a demographer with the Williams Institute at the School of Law at the University of California, Los Angeles, estimates based on surveys that query people about their sexual orientation and **gender identity** (the gender one identifies with, which can differ from one's assigned sex at birth) suggest that about 3% to 5% of the free community are gay, lesbian, or bisexual. Gates noted that the number of transgender (and likely intersex) people in the community is also unknown but is likely 1% or less (Flores, Herman, Gates, & Brown, 2016). On the basis of these estimates, we might reasonably expect that similar percentages for each group are represented in prisons. In addition, because heterosexual relations are formally restricted in prisons, some percentage of male and female inmates engage in same-sex sexual activity while incarcerated, though they may never have done so when they were free. Lieb and his colleagues (2011) found

**Gender identity:** The gender one identifies with, which can differ from one's assigned sex at birth.

that the number of men who have ever had sex with another man in the free community ranges around 6.4%. We might expect, therefore, that the number of men who engage in sexual relations with other men while in prison is likely about 6% or higher.

As with people who are gay or lesbian, the exact number of transgender and intersex people in communities is unknown, as they often keep their gender identity hidden, knowing they might be marginalized (Tewksbury & Potter, 2005). In prisons, the number of transgender inmates is also difficult to ascertain, although larger male prisons often house many (Sexton, Jenness, & Sumner, 2010). Jenness and her colleagues (2007, as cited in Sexton et al., 2010) found in their study of transgender female inmates in California prisons that these inmates were much more likely than other inmates (59% compared with 4.4%) to report being sexually assaulted while in prison. This report has been backed up by PREA-inspired research by the BJS (Beck et al., 2013).

Protecting sexual and gender identity minorities in prisons presents a challenge for administrators, particularly in male prisons. Male bravado and posturing to show strength and ward off attacks is common in male prisons, which makes those who are unable or unwilling to put on such fronts targets for abuse or predation. If one is a transgender female inmate in a male prison, the challenges mount. Not only must administrators be concerned about the safety of the inmate but they must also figure out a way to accommodate her needs for privacy, medical treatment, and housing. As noted in Chapter 5, PREA regulations now require greater consideration of the privacy, respect, and medical needs of transgender and intersex inmates because they have been a particular target for abuse in jails and prisons, particularly transgender women in men's prisons (Routh et al., 2014; Sexton et al., 2010; Stohr, 2014). Despite the PREA regulations, however, many states balk at paying for gender confirmation surgery (this surgery addresses gender dysphoria, which occurs when one's assigned gender does not match one's gender identity). So far only two states, California and Idaho, have gotten close to it. In California, the decision in a federal lawsuit ordered the surgery, but the state paroled the affected inmate before it was required (Boone, 2019). A federal lawsuit brought by a female inmate housed in a male prison in Idaho was also decided in the inmate's favor (the state must allow and pay for the surgery), and that decision was affirmed by the Ninth Circuit Federal Appellate Court, but Idaho's governor (Brad Little) vowed to appeal to the U.S. Supreme Court at the time of this writing in May 2020 (Idaho Office of the Governor, 2020).

In women's prisons, as is the case with racial and ethnic minorities, there appears to be more acceptance of both lesbian and transgender inmates; part of this greater acceptance may have to do with the sense that female inmates have direct experience with marginalization and therefore are more understanding of those who vary from the norm in sexual orientation or gender identity. Or it might have to do with the lesser need of women in prisons to defend themselves physically from predation of other inmates; the frequency of violent and sexual attacks in women's prisons, as far as this can be determined, is much lower than it is in men's facilities (Britton, 2003).



AP Photo/Pat Sullivan

**Photo 7.5** Transgender and bisexual inmates visit in their specially designated cellblock in the Harris County Jail in Houston, Texas. Separate facilities for transgender female inmates protect their privacy and enhance their safety from assault by male inmates.

## Immigration Prisons

### LO 7.9 Identify the challenges faced in prisons housing those seeking asylum.

In years past, prisons for immigrants were used primarily for those who had committed nonviolent drug offenses or who had crossed the border after being deported (Oosting, 2019). In recent years, however, immigration prisons and jails, overseen by Immigration and Customs Enforcement, a division of the U.S. Department of Homeland Security, and their use have exponentially expanded. The Trump administration has used them to detain migrant individuals and families closer to the southern border of the United States so they might be easier to process (Greenwald, 2017; although some private providers have opened prisons and jails much further north [e.g., a prison in Michigan and jails in Washington State as discussed in Chapter 5]; Oosting, 2019, p. 1).

As people detained in immigration prisons are civilly committed, there are not the usual due process protections governing their internment. They can, and have been, held for years with no legal recourse to protest their confinement. As of 2017, the United States detained 440,000 people in about 200 immigrant prisons (Greenwald, 2017, p. 1). As Greenwald (2017) documented, “These facilities have grown into a highly privatized, lucrative, and abusive industry that profits off the misery of immigrants awaiting deportation . . . [they found] substandard medical care, widespread physical and sexual abuse, virtual slave-labor working conditions and more. These abuses happen behind closed doors with little to no oversight” (p. 1). The American Civil Liberties Union appears to concur, noting that the facilities, supervision, and services provided are substandard and very costly for taxpayers, and much of this detention is essentially unnecessary. They also note that increasingly families who are often asylum seekers fleeing violence are held in such prisons (American Civil Liberties Union, 2019, p. 1).

In addition to questionable and sometimes abusive operations, and a lack of legal protection for their inmates, such prisons, many of them privately held, may be ethically compromising government officials (Burke & Mendoza, 2019; Mattise, 2017). Four months after former White House chief of staff John Kelly stepped down from his post in January 2019, he was appointed to the board of the conglomerate (Caliburn International) that operates the largest prison for immigrant children in the United States (Associated Press, 2019). Prior to his role as chief of staff, Kelly had worked as secretary of the Department of Homeland Security, where he announced that the United States was considering the separation of immigrant families (Associated Press, 2019, p. 3). Now in the private sector, Kelly is likely to profit from his own decision.

## SUMMARY

**LO 7.1** Describe the current state of the prison system and the factors that affect it.

- The common issues facing prisons today are centered on overcrowding and underfunding. The needs of staff and inmates are often shaped by shortages.

**LO 7.2** Identify the different types of prisons and their classifications.

- Supermax prisons are high-security prisons that hold those who are violent or disruptive in other prisons in the state or federal system.

- Maximum-security prisons are high-security prisons that may have the same security controls as supermaxes, but inside inmates are not locked down as much.
- Medium-security prisons are high security, but inmates are able to move around more freely within the “walls”; inmates are of all kinds and tend to program well.
- Minimum-security prisons hold lower-level felony offenders and those who are “short timers,” or people who are relatively close to a release date; inmates not expected to be an escape or behavioral problem.

**LO 7.3** Discuss the cost/benefit analysis of the value of prison.

- The costs to support an individual in prison are high. In some situations the cost may outweigh the significance of the crime or other avenues of handling it.

**LO 7.4** Explain what prisonization, mortification, importation, pains of imprisonment, and mature coping are and how they influence inmate behavior.

- *Total institutions* exist to different degrees depending on the security level and operation of prisons.
- To varying degrees, inmates experience mortification and pain related to their incarcerated status, and as humans they will behave in either pro- or antisocial ways to lessen that pain.

**LO 7.5** Explain what prison gangs are and why they exist in prisons.

- Inmates adopt certain roles and engage in certain behaviors because they are prisonized and adopt the subculture or because they import aspects of the culture from the outside community into the prison.
- Gangs and violence are one way that inmates adjust to their environment and have their needs met and their pain alleviated.

**LO 7.6** Identify the reasons why violence, riots, and sexual assaults occur in prisons and be familiar with some strategies for their reduction.

- Strategies to reduce violence exist and can be practiced by agencies interested in reducing violence.
- Mature coping is one way that correctional clients can fruitfully adjust and perhaps reform while incarcerated.
- Social support potentially has prosocial effects (e.g., reduce violence) both while inmates are in prison and once they leave.

**LO 7.7** State why care for aging inmates, physically ill inmates, and inmates with mental illnesses in prisons has become such an issue.

- As the age of the prison population increases, so do the costs associated with their imprisonment. They need an increased amount of medical care and services and may need to be housed away from the general population.

**LO 7.8** Recognize the need to respect the needs of LGBTQ+ inmates.

- Any individual’s identification of sexual orientation or gender identity must be respected in relation to their general care and well-being. They are often the target of violent crimes while imprisoned, and care needs to be taken to make the environment safe for them.

**LO 7.9** Identify the challenges faced in prisons housing those seeking asylum.

- Increasingly, persons seeking asylum in the United States are being detained for their hearings or for deportation. This is placing a strain on the system, and often their general rights and basics of care are not being met.

KEY TERMS

|                              |     |                          |     |                   |     |
|------------------------------|-----|--------------------------|-----|-------------------|-----|
| Attica Prison riot           | 180 | Maximum-security prisons | 168 | Prison subculture | 173 |
| Deinstitutionalization of    |     | Medium-security prisons  | 168 | Prisonization     | 171 |
| people with mental illnesses | 185 | Minimum-security prisons | 169 | Prisons           | 165 |
| Gangs                        | 174 | Mortification            | 171 | Supermax prisons  | 166 |
| Gender identity              | 186 | New Mexico State         |     | Total institution | 171 |
| Importation                  | 171 | Penitentiary riot        | 180 |                   |     |
| Mature coping                | 182 | Pains of imprisonment    | 171 |                   |     |

## DISCUSSION QUESTIONS

1. Which prison among those covered in our history sections most reminds you of a supermax prison? What were the problems with this historical prison? On the basis of what we know of that prison, what problems do you foresee arising with the supermax prisons of today?
2. Define a *total institution* and how it might vary by type of correctional arrangement (e.g., probation, parole, jail, prison) and inmate status.
3. Inmate subcultures are thought to be related to the concepts of prisonization, importation, and the pains of imprisonment. Discuss how and why this might be so.
4. What are the attributes of gangs that make them appealing to inmates in prisons? How might that appeal be reduced by prison managers?
5. What are some of the difficulties that correctional organizations might face in using strategies to reduce violence? Who would you expect to support these strategies, and who might not?
6. How might correctional clients configure their environment to ensure their own reform? How might we as citizens assist them in that endeavor?
7. What might be the most effective strategies for managing special populations in prisons?







Kim Hairston/MCT/Newscom

# 8

## The Corrections Experience for Staff

### TEST YOUR KNOWLEDGE

Test your current knowledge of work in corrections by answering the following questions. Check your answers on page 387 after reading the chapter.

1. Correctional officers are not called guards anymore. (True or false?)
2. Name three of the five characteristics of a profession.
3. Generally speaking, which job do you think pays the most and the least of these three (and why): police officer, correctional officer, or probation and parole officer?
4. Generally speaking, which job do you think requires the most education and which requires the least (and why): police officer, correctional officer, or probation and parole officer?
5. Television programs and movies tend to depict corrections work accurately. (True or false?)
6. A role is what a person does on the job every day. (True or false?)
7. What factors likely cause stress for correctional officers?
8. Unionized correctional officers make more money than nonunionized correctional officers. (True or false?)

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 8.1 Compare what makes work a profession as opposed to just a job.
- 8.2 Describe the effect of growth in staff and clients or inmates.
- 8.3 Explain the importance of education and training in the correctional field.
- 8.4 Describe how and why demographic factors affect corrections.
- 8.5 Identify what correctional roles are.
- 8.6 Describe the influence of subculture and socialization on correctional officers.
- 8.7 Discuss why correctional staff might abuse power and experience stress and burnout.

### JOHN'S TRAGIC STORY

#### Mary K. Stohr

John was about 22 when I first met him as an inmate on my caseload at the adult male prison I worked at in the 1980s. I was his classification counselor and only a few years older than he was at the time. He'd had a tragic life up until that point: He was abandoned, for the most part, by his father; his mother was hauled away to a mental institution in front of him when he was 5; and foster care homes and struggling family members took care of him for the rest of his childhood. He was in and out of juvenile facilities, mostly for property crimes and joy riding, though he admitted that he had a problem controlling his temper. He received very few visits, as the people he loved (his girlfriend and sister) were poor and unable to make the trip often. His instant offense was one of those crimes (robbery) that was technically serious, but the facts indicated that it was really burglary. It was the 1980s, and the talk was all about being "tough on crime," and that meant criminals like John, too.

He would come in and talk to me at length once or twice a week about his life and his hopes (e.g., getting a job once released, staying out of prison, and reuniting with his off-and-on estranged girlfriend). He seemed sincere and in need of a friend, but a correctional staffer can never cross the line or be "friends" with inmates, though they can be friendly, to a point. One time, he came in to talk, and it was clear he had been crying; his dad was presumed to have killed himself by driving his truck into a lake on purpose and drowning.

(Continued)



(Continued)

John was distraught, feeling that he had let the father who had pretty much abandoned him down. I talked to John for some time, and though upset, he seemed rational. Security staff wanted to put him in segregation, but I successfully argued against it. John continued to come to see me and seemed to need someone to talk to. Then, all of a sudden, about a month after his dad died, he stopped coming by. It was a Friday night, and I was getting ready to leave for the weekend and tracked him down at a bingo game in the cafeteria. He was with one of his buddies, and when I asked him why I hadn't seen him in the past couple of weeks, he was noncommittal and uncharacteristically standoffish. I suspected that something was wrong. In retrospect, I should have probed further and have always wondered if things would have turned out differently if I had.

The next morning, I came in and was told what had happened. John had escaped from the prison during the night (it was a restricted, minimum-security prison, with no fence) and stolen a motorcycle, ostensibly to try to see his girlfriend, who had recently broken up with him. He drove the bike wildly in downtown Vancouver, Washington, and attracted the attention of a police officer, who then gave chase. John refused to stop for the officer and instead sped up and seemingly purposefully drove straight into a concrete wall. He died instantly.

## Introduction: What Is a Profession?

### LO 8.1 Compare what makes work a profession as opposed to just a job.

Work in corrections has changed a great deal from the *shire reeves* (the Old English name for sheriffs) who ran the jails in England in the Middle Ages and the guards who staffed the first Pennsylvania and New York prisons. For one thing, security staff in correctional facilities are no longer referred to as *guards*, as that title is thought to reflect a more primitive role, and are instead formally referred to as *correctional officers*, perhaps a reflection of the move to professional status for these staff.

Yet the public does not generally see corrections work as a profession. Other than probation and parole work (which, not coincidentally, usually requires more education and pays more), most college students do not identify work in jails or prisons as their career goal either. Also, despite a century of effort by some determined correctional administrators, corrections organizations (such as the American Correctional Association [ACA], the American Jail Association [AJA], and the American Probation and Parole Association), and academicians, many correctional jobs are not structured like a profession. A **profession** is typified by five characteristics: (a) prior educational attainment involving college, (b) formal training on the job or just prior to the start of the job, (c) pay and benefits that are commensurate with the work, (d) the ability to exercise discretion, and (e) work that is guided by a code of ethics (Stohr & Collins, 2014). Yet most jobs in corrections still do not adequately meet the first three of these criteria for professional status, and though most correctional workplaces either have their own codes of ethics or are nominally guided by that of a corrections organization, there is no enforcement of this code as there is for medical doctors with the American Medical Association or for lawyers with the American Bar Association.

In this chapter, we will explore the nature of correctional work as it has evolved and as it is shaped by professionalism, the requirements of the job, and clients and inmates. We will review the factors that lead to stress and turnover for officers and how those might be addressed. Although correctional work is often not the first choice of a college graduate, it does have its own appeal, and we will discuss why that might be so and how it has grown in the past three decades.

**Profession:** Regarding the positions of corrections officers and staff, distinguished by prior educational attainment involving college, formal training on the job or just prior to the start of the job, pay and benefits that are commensurate with the work, the ability to exercise discretion, and work that is guided by a code of ethics.

## The State of the Work in Correctional Institutions and Programs

**LO 8.2** Describe the effect of growth in staff and clients or inmates.

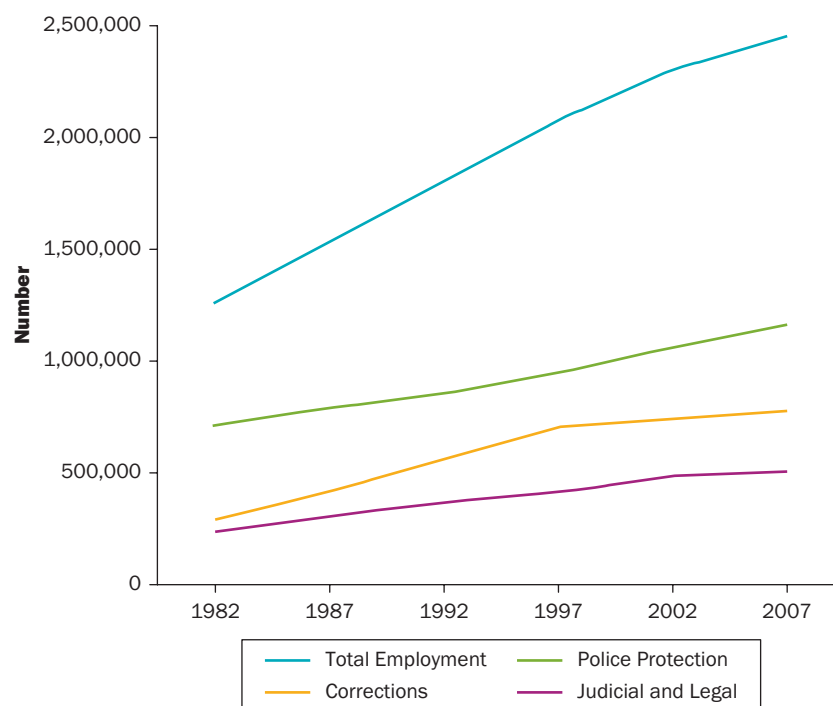
### Growth in Staff and Clients or Inmates

As with exploding inmate and offender populations, and more recent decarceration of same, the number of employees in corrections, who are often undereducated, undertrained, and underpaid for their work, has grown astronomically. In the years when incarceration rates were highest (the 1980s to 2008), there was an almost 600% increase in direct expenditures for all criminal justice agencies (i.e., police, courts, and corrections). (For the latest data available at the time of this publication, see Figure 8.1.) During that same time period, just the expenditures for corrections increased by 660%. The majority of those employees were correctional officers (66%) working in state and local correctional facilities and programs, both public and private (Hughes, 2006; Perry, 2008; Stephan, 2008, p. 4). By 2017, more than 696,340 people worked full-time in public employment in state and local corrections alone (U.S. Census Bureau, 2019, p. 1). The number of public-sector employees in corrections at the state and local levels peaked in 2009 at 739,733 and then decreased until 2013 and then rose to its 2017 level (U.S. Census Bureau tables for 2006 through 2017). Unfortunately, there are not equivalent figures to compare for private-sector corrections employment.

At the state level, where most prisons and most adult probation and parole agencies are operated and funded, three quarters or more of the correctional budget was spent on correctional institutions through 2011 (Kyckelhahn, 2014, p. 2). Given the recession that began in

**FIGURE 8.1** Direct Expenditure by Criminal Justice Function, 1982–2007

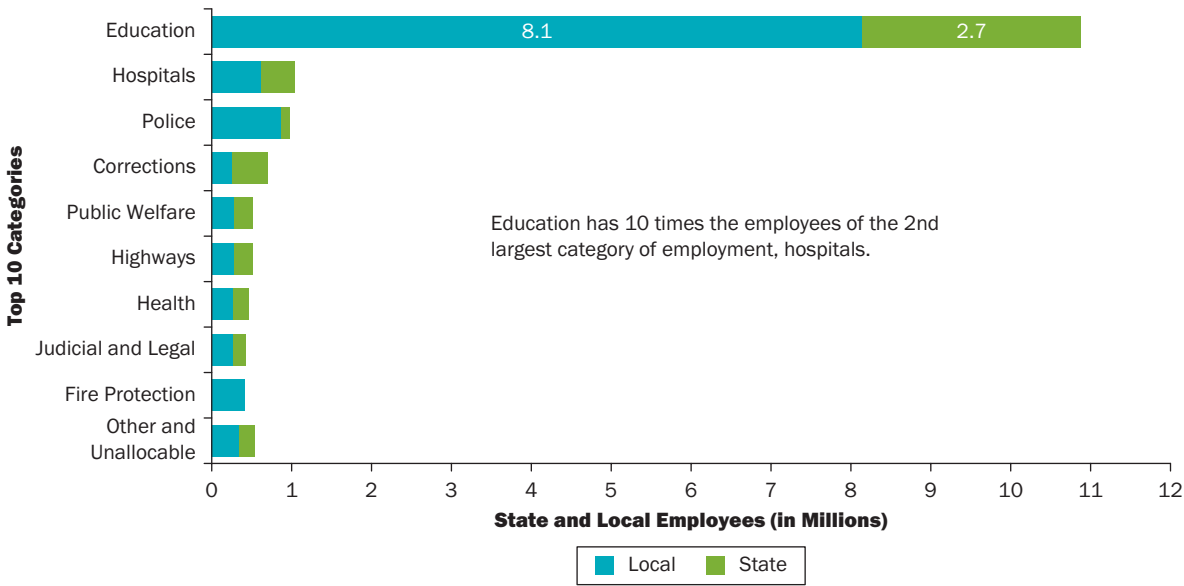
Source: Bureau of Justice Statistics (2008). Most recent data available.





■ **FIGURE 8.2** State and Local Government Employees by Field of Work

Source: U.S. Census Bureau (n.d.).



2007 and ended about 3 to 4 years later and the decarceration we are seeing at the local, state, and federal levels now (Carson, 2020; Kaebler & Cowhig, 2018; Kaebler, Glaze, Tsoutis, & Minton, 2016; Zeng, 2020), it is likely that these increases have not continued, however. In fact, as indicated by Figure 8.2, by far, most employees of state and local governments are employed in education (either K–12 or higher education) or by hospitals or the police.

Of these employees, in 2005 (the latest date for which we have figures), the majority, particularly those who work directly with inmates as correctional staff, were men, by a 3:1 ratio (Stephan, 2008, p. 2). In federal facilities, the gender differences were largest, with 87% of correctional officers being men and only 13% being women. The smallest gender employment difference was in the 400-plus private facilities, where 52% were men and 48% were women. In the more numerous state correctional facilities, there were 74% male correctional officers compared with 26% female officers (Stephan, 2008, p. 2). Notably, these gender differences by level and type of facility very closely align with pay differences. Among prisons, federal correctional officers, who are much more likely to be men, are the best paid, and private facility correctional officers, who are almost as likely to be women, are paid the least (see Table 8.1 regarding private versus public pay for correctional work).

**TABLE 8.1** Mean Annual Pay for Full-Time Workers, 2018

|  | CORRECTIONAL OFFICERS AND JAILERS | PROBATION OFFICERS AND TREATMENT SPECIALISTS | POLICE AND SHERIFFS |
|--|-----------------------------------|--|---------------------|
| Public and private local, state, and federal | \$49,300                          | \$58,790                                     | \$65,400            |

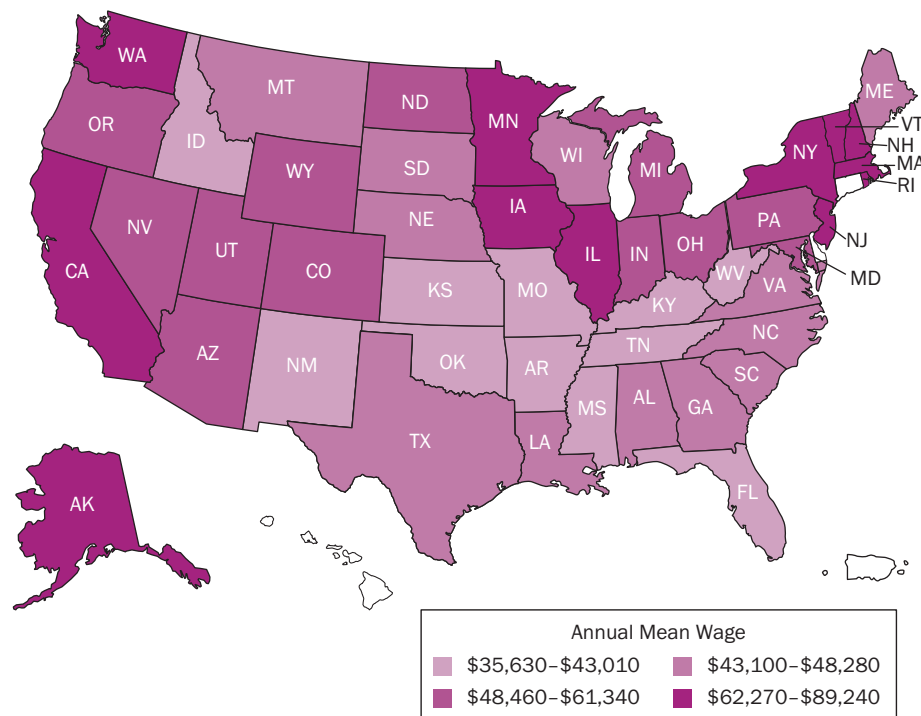
Source: Bureau of Labor Statistics (2018).

Even with this growth in staff numbers overall, whether men or women, the proportional growth in inmates has been much larger. As a result, the ratio of inmates to staff in prisons grew significantly from 2000 to 2005, with the most inmates to correctional staff in federal prisons (10.3 in 2006 but decreasing to 4.4 in 2015) and private prisons (6.9 vs. 5.0 in public) in 2005, compared with state prisons at 4.9 (Davidson, 2015, p. 1; Stephan, 2008, p. 5). Likewise, jails continue to hold in the neighborhood of 81% of their capacity (Zeng, 2020), and the case-loads of parole officers at the state level (data on state or federal probation officer caseloads and parole officer caseloads at the federal level were not available) range around 38 per officer (Bonczar, 2008, p. 1). As the incarceration rate has steadily decreased (since 2009), the number of staff working in state and local corrections has as well. Simply put, staff working in corrections continue to be stretched very thin despite the decreases in inmate and client numbers. Also, as indicated in Figure 8.3, the employment of correctional officers in prisons and jails varies somewhat by state, with states with larger populations employing the most.

Given these numbers of inmates and clients, one can appreciate the organizational problems that develop for correctional managers seeking to hire, train, and retain the best employees to do this difficult work, especially when the unemployment rate is low (post-COVID-19 unemployment is high at the time of this writing in May 2020, but a few months before it was not, and a few years hence it may not be either). Perhaps, in part, because of this recognized need to get and keep the best employees, the management of correctional institutions and programs has shifted over the years as efforts to professionalize, democratize (allow more say in the work by those doing it), and standardize work in corrections have had some success.

■ **FIGURE 8.3** Annual Mean Wage of Probation Officers and Correctional Treatment Specialists by State, May 2018

Source: Bureau of Labor Statistics (2018, p. 4).



Blank Areas/States Indicate Data Not Available

In general, compensation that is commensurate with job requirements and skills is a clear indication of the value given to a particular profession. It is true that it would be difficult to regard some correctional institutions or programs or their staff as *professionals* because they do not meet the educational, training, or pay requirements of a profession. However, there are a number of correctional institutions and programs that have made much progress in this area, though the path to professionalization and the creation of a work environment that is conducive to employee growth and welfare are not always achieved.

So if we were to imagine a continuum of correctional professionalism across the field, we could probably generalize that community corrections officers (probation and parole officers) and their work are more professionalized—defined as having more education, training, and pay—than are prison and jail correctional officers (see Table 8.1). (We will discuss ethics separately at the end of the chapter, and it was also covered in Chapter 3.) Of course, these generalizations do not hold true for every institution or every locality. For instance, in some larger city jails, officers might be paid and trained as well as or better than prison officers or even adult probation and parole officers. Typically, jail officers in large counties are paid more than those in small counties and often, but not always, are paid less than state- and federal-level correctional officers. Usually, federal-level community corrections officers make more than prison officers at their level of government (e.g., at the federal or state level; Stohr & Collins, 2014). Moreover, there is a great deal of variation by state. For instance, probation officers in Florida made a mean wage of \$35,630 in 2018, while probation officers in California made \$89,240 on average (Bureau of Labor Statistics, 2018, p. 4). These data do indicate that attempts to professionalize corrections, as it pertains to pay, need more effort in some areas than in others.

Note that police officers at both the state and local levels are paid about \$16,000 more per year than correctional officers and more than \$7,000 more than probation and parole officers in any given state (see Table 8.1). Therefore, it is not surprising that both local and state police officers, along with probation and parole officers, are more likely to require at least some college and possibly a college degree. Students of criminal justice tend to recognize this difference in that when asked what they want to do when they graduate, they are more likely to identify police or community corrections (probation and parole) jobs as desirable over work in a prison or jail.

Notably, the push to privatize correctional and law enforcement work since the 1980s has not resulted in better pay for staff. In fact, in general, privately employed correctional and law enforcement officers' median pay is less than for comparable jobs in the public sector. If better pay is correlated with a more professional workforce, then we can conclude that the privatization efforts are not moving us in that direction.

### Perceived Benefits of Correctional Work

There are many reasons why people who work in corrections might find it gratifying. For one, people are attracted to correctional work because it has been a booming business for a number of decades, creating thousands of jobs in the process. Correctional work also provides a steady, if not lucrative, paycheck (see Table 8.1).

People who want to make a difference in other people's lives, to end the tragic circumstances that tend to produce a cycle of street-level criminals, might choose to work with juveniles in corrections or in treatment programming with adults or juveniles on community supervision or in institutions. When they see someone change for the better and know that they might have contributed to that change, this is when correctional work can be personally fulfilling.

It is also possible that those who are attracted to correctional work are curious about the human psyche and how it operates. Working with people who have engaged in seriously deviant behavior enhances the understanding about why people behave the way they

do. Some might also find it rewarding to be engaged in keeping these seriously deviant and violent offenders off the streets and, in that sense, to be part of the justice-dispensing machinery that is corrections.

### Collective Bargaining

Correctional staff moved to unionize as a means of gaining power vis-à-vis administrators. As we know from our history of corrections, the wardens of earlier prisons (and this is still true, to some extent, today in some correctional institutions) often acted like dictators over their fiefdom, the prison (Bergner, 1998; Rideau, 2010). And it was not only inmates who were their subjects but also staff, who were relatively powerless to voice their concerns or to earn a decent and livable wage. By unionizing, correctional staff working at the state and local levels were able to gain some collective power to bargain with administrators to improve their own work conditions. A *union worker* is defined by the U.S. Department of Labor (2010) as follows:

Any employee in a union occupation when all of the following conditions are met: a labor organization is recognized as the bargaining agent for all workers in the occupation; wage and salary rates are determined through collective bargaining or negotiations; and settlement terms, which must include earnings provisions and may include benefit provisions, are embodied in a signed, mutually binding collective bargaining agreement. A nonunion worker is an employee in an occupation not meeting the conditions for union coverage. (p. 1)

A number of concerns regarding unionization have been raised, however, and these include the belief that unionization restricts the ability of administrators to fire incompetent people; that union contracts are too restrictive regarding the work that people can do; and that, in some cases, unions have worked to increase incarceration as a means of increasing job opportunities. Although some of these concerns may have merit, it is also true that those states with unionized correctional staff pay those staff more and provide more benefits for them (see Table 8.2). Research by an economist for the Bureau of Labor Statistics



Alamy/Marmaduke St. John

**Photo 8.1** Control center staff members have the challenging job of monitoring several screens at once and are responsible for the electronic unlocking and locking of most doors in the facility.

**TABLE 8.2** Mean Hourly Wages of Union and Nonunion State and Local Correctional Workers and Law Enforcement

|                                   | UNION   | NONUNION |
|-----------------------------------|---------|----------|
| Probation and parole              | \$27.69 | \$21.00  |
| Correctional officers and jailers | 23.36   | 14.74    |
| Police                            | 30.42   | 20.97    |

Source: U.S. Department of Labor (2010, Table 13). Most recent data available upon publication.

(Long, 2013, p. 18) indicates that the difference in pay for state and local unionized and nonunionized workers generally ranges from a low of \$4 to a high of \$8 per hour. Higher wages are likely to increase the ability of those unionized work environments to attract and keep better and more professional workers.

If it is harder for administrators to fire incompetent unionized workers, it is also harder for administrators to fire people on the basis of their politics or simply because they do not like them. Such contrarian voices in the workforce (those who disagree with administrative practices) often provide an important check on the power of administrators, and unions give such people protection from the wrath of those administrators who might want to retaliate against “contrarians.”

Although the union for correctional officers in California did lobby to increase the number of institutions and jobs in corrections in that state in the 1990s, it is possible that they were just representing the sentiments of their membership. Correctional staff tend to be somewhat conservative regarding crime issues and so would tend to support, like the general public of the 1980s, 1990s, and 2000s, the creation of more correctional institutions.

## Why Require More Education and Training?

### LO 8.3 Explain the importance of education and training in the correctional field.

First of all—and unfortunately—most correctional institutions and programs do not have prior educational requirements that would elevate them to the level of a profession. Although it is true that many probation and parole officers must have a college degree or at least some college to qualify for the job, most jails, prisons (with the exception of federal correctional officers, who must have a bachelor’s degree and experience), and even juvenile institutions—even those with a greater emphasis on rehabilitative programming—do not often require such a qualification from applicants.

### Stanford Prison Experiment

Yet the oft-cited **Stanford prison experiment** provides a powerful argument for the value of formal education and training for correctional staff. In this 1971 experiment, volunteer students, with no training as officers and only their own expectations and beliefs to guide them, were divided into officers and inmates in a makeshift “prison” (Haney, Banks, & Zimbardo, 1981). The “officers” were outfitted in uniforms, including reflective sunglasses, and given nightsticks. The “inmates” were given sacklike attire. Neither officers nor inmates were told of any rules or policies to guide or restrict their behavior. Predictably, a few of these officers, or guards, engaged in verbal and psychological abuse of the inmates. In the end, about one third of the officers engaged in the abuse, and others stood by while it was going on. The experiment was stopped after a few days and is often referenced as an example of how correctional work and the subcultures that develop as part of the job can foster corrupt behavior by officers.

The problem with the experiment, however, was that the officers were never given any education or training in corrections work. They were directed to exercise their discretion in controlling the inmates, but it was a discretion that was not necessarily anchored to any history or knowledge of “best practices” in corrections. Rather, the “choices” made by the officers in the absence of any education and training were likely shaped by the movies and popular-press depictions of corrections that tended to reinforce the stereotypes of the institutions, programs, and work. Not knowing how best to “get people to do what they otherwise wouldn’t” (Dahl’s [1961] definition of **power**), the guards used what knowledge of corrections they had, even if it was all wrong.

**Stanford prison experiment:** A 1971 experiment conducted at Stanford University in which volunteer students were divided into officers and inmates in a makeshift prison. The experiment ended with about one third of the “officers” engaged in the abuse of “inmates,” and other officers stood by while it was going on. The experiment was stopped after a few days and is often referenced as an example of how correctional work and the subcultures that develop as part of the job can foster corrupt behavior by officers.

**Power:** The ability to “get people to do what they otherwise wouldn’t” (Dahl, 1961).



## Abu Ghraib

The **Abu Ghraib** scandal of 2004, in which prisoners were tortured by mostly untrained “correctional officers” in the American-operated Abu Ghraib military prison in Iraq, tends to reinforce the lessons of the Stanford prison experiment, even contrived as those circumstances were. At Abu Ghraib, some correctional officers made inmates sleep naked, crawl on the floor, and pose in pyramids naked (while staff took pictures). A number of officers also deprived inmates of food and basic necessities and engaged in physical torture. The U.S. Army’s investigation of the abuses at Abu Ghraib found that officers engaged in the following:

Breaking chemical lights and pouring the phosphoric liquid on detainees; pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick, and using military working dogs to frighten and intimidate detainees with threats of attack, and in one instance actually biting a detainee. (Hersh, 2004, p. 1)

Although the Army wanted to blame the abuses that occurred at Abu Ghraib on untrained and rogue staffers at the prison (and six of them were prosecuted), the blame for the abuses extended up the chain of command to the Army Reserve brigadier general in charge of all Iraqi prisons, though she had had no previous experience or training in running prisons (she was relieved of command), and perhaps as high as defense secretary Donald Rumsfeld.

As the international furor grew, senior military officers, and President George W. Bush, insisted that the actions of a few did not reflect the conduct of the military as a whole. Taguba’s report [Major General Antonio M. Taguba investigated what happened at Abu Ghraib], however, amounts to an unsparing study of collective wrongdoing and the failure of Army leadership at the highest levels. The picture he draws of Abu Ghraib is one in which Army regulations and the Geneva conventions were routinely violated, and in which much of the day-to-day management of the prisoners was abdicated to Army military-intelligence units and civilian contract employees. Interrogating prisoners and getting intelligence, including by intimidation and torture, was the priority. (Hersh, 2004, p. 4)

Simply put, the lesson from these incidents and countless corrections scandals over the years that have involved the systematic abuse of inmates by staff is that some people will not act professionally—or even decently—especially when they have no education or training in that profession. The training and education will not necessarily prevent all such abuses (at least two of the officers involved in Abu Ghraib had prior experience as correctional officers in Virginia and presumably some training in that state),

**Abu Ghraib:** A military prison in Iraq where untrained “correctional officers” subjected prisoners to torture.



**Photo 8.2** An unidentified detainee stands on a box with a bag on his head and wires attached to him, at the Abu Ghraib prison in Baghdad.

AP Photo/ASSOCIATED PRESS

but they will at least provide the officers with the knowledge and skills to do the job the way it should be done.

Correctional work often does not resemble other professions, because the formal training provided for many new hires, including the number of hours required and the quality of that training, does not approach the level of other professions, which may schedule months of training (e.g., police departments with an average of 761 hours, or 19 weeks, of training for new recruits [Reaves, 2009], and some departments with well over 1,000 hours [e.g., the Dallas Police Department (2018) requires 1,431 hours]) or extensive internships, months or years in duration, in other fields (e.g., teachers, social workers, and doctors).

The typical correctional job has lesser requirements for formal training or structured experience. For instance, in a *Corrections Compendium* (Clayton, 2003) survey, the researchers found that 31 of the reporting U.S. agencies required at least 200 hours of preservice training for those planning to work in a correctional institution. Likewise, in a quick survey of 150 directors and staff trainers, with responses received from 13 states or agencies in April 2004, the Juvenile Justice Trainers Association found that about 140 to 180 hours of preservice, academy-like training is required for most new hires in juvenile facilities (personal correspondence with M. Stohr, May 2004). In a more recent survey of correctional training directors in 44 states, Burton, Lux, Cullen, Miller, and Burton (2018) found that most of the states required between 100 and 300 hours of training for their new recruits, with one state requiring less than 100 hours and 12 requiring more than 300 hours.

Moreover, in some professions, the requisite college or professional degree is geared toward the work itself (e.g., computer programming, law school, or a master's in social work). Yet when a college degree is *required* for a job in corrections, it is rarely specifically a criminal justice degree but is typically one or more of the social science degrees, which may include no classes on corrections or the criminal justice system at all.

Of course, these deficits in formal education and knowledge base and in training leave correctional workers less suited to perform their job in anything approaching a historical or present-day, research-based context. When they have not studied corrections or been provided with sufficient training, they may not understand the reason some practices are undertaken or why others are abandoned. They do not have the requisite tools to suggest changes or the background in research to know whether something “works” or not. Their ability to behave and develop as a professional is limited. So when they use their *discretion* (defined here as the ability to make choices and to act or not act on them), they could be making ill-informed choices that are not based on knowledge or experience and are overly influenced by their personal ideology, politics, or the media (Merlo & Benekos, 2000).

## Ethics

Not surprisingly and as was discussed in this chapter and Chapter 3 on ethics, there have been numerous instances of documented ethical abuses by staff that include sexual assaults—beatings and rapes of clients on probation and parole, as well as of inmates in jails and prisons in the United States (Amnesty International, 2004; Bard, 1997; Schofield, 1997; Serrano, 2006). As a means of preventing such abuses, correctional agencies will often adopt an ethics code, such as those promulgated by the ACA (see In Focus 8.1), the AJA, or others, and train people on what is right and wrong behavior in corrections.

The importance of training correctional workers initially and throughout their careers on what constitutes ethical behavior cannot be overemphasized. Just as important as the training, however, is ensuring that ethical people work in the organization. To do this, managers might consider using selection instruments and practices geared toward weeding out those who have little understanding of what is right and wrong and promoting only those people who exhibit that understanding in their daily work.



## In Focus 8.1

### ACA CODE OF ETHICS

#### Preamble

The American Correctional Association expects of its members unfailing honesty, respect for the dignity and individuality of human beings, and a commitment to professional and compassionate service. To this end, we subscribe to the following principles.

1. Members shall respect and protect the civil and legal rights of all individuals.
2. Members shall treat every professional situation with concern for the welfare of the individuals involved and with no intent to personal gain.
3. Members shall maintain relationships with colleagues to promote mutual respect within the profession and improve the quality of service.
4. Members shall make public criticism of their colleagues or their agencies only when warranted, verifiable, and constructive.
5. Members shall respect the importance of all disciplines within the criminal justice system and work to improve cooperation with each segment.
6. Members shall honor the public's right to information and share information with the public to the extent permitted by law subject to individuals' right to privacy.
7. Members shall respect and protect the right of the public to be safeguarded from criminal activity.
8. Members shall refrain from using their positions to secure personal privileges or advantages.
9. Members shall refrain from allowing personal interest to impair objectivity in the performance of duty while acting in an official capacity.
10. Members shall refrain from entering into any formal or informal activity or agreement which presents a conflict of interest or is inconsistent with the conscientious performance of duties.
11. Members shall refrain from accepting any gift, service, or favor that is or appears to be improper or implies an obligation inconsistent with the free and objective exercise of professional duties.
12. Members shall clearly differentiate between personal views/statements and views/statements/positions made on behalf of the agency or Association.
13. Members shall report to appropriate authorities any corrupt or unethical behaviors in which there is sufficient evidence to justify review.
14. Members shall refrain from discriminating against any individual because of race, gender, creed, national origin, religious affiliation, age, disability, or any other type of prohibited discrimination.
15. Members shall preserve the integrity of private information; they shall refrain from seeking information on individuals beyond that which is necessary to implement responsibilities and perform their duties; members shall refrain from revealing nonpublic information unless expressly authorized to do so.
16. Members shall make all appointments, promotions, and dismissals in accordance with established civil service rules, applicable contract agreements, and individual merit, rather than furtherance of personal interests.
17. Members shall respect, promote, and contribute to a work place that is safe, healthy, and free of harassment in any form.

Source: Reprinted with permission from the ACA website ([www.aca.org](http://www.aca.org)).

## Correctional Work Is Little Understood

It is possible that students and the general public may not view correctional work as a desirable career choice because they do not understand it. The truth is that few people outside correctional work (or academe) probably know how institutions and community

## ? Ethical Issue

### WHAT WOULD YOU DO?

As a probation and parole agent, you become aware that one of your colleagues with whom you have a good relationship is sexually preying on his female probationers and parolees. He essentially waits for them to commit violations such as nonpayment of fines, missed appointments, and providing dirty urine samples and then hints that he will not violate their probation or parole status if they are forthcoming

with sexual favors. You learn that he has been quite successful with this strategy and that he overlooks numerous violations. Would you (a) ignore this as none of your business, (b) talk to him and counsel him on the dangers of doing this and tell him to stop or you will report him (it is a crime for someone with legal authority over another to demand sexual favors), or (c) report him to his supervisor?

supervision actually operate, nor do they hold the roles of staff working in those agencies in very high regard. Students are acculturated by a media preoccupied with violence that tends to depict correctional institutions as dark, corrupt places peopled by abusive or, at a minimum, cynical and distant “guards” (Conover, 2001; Johnson, 2002; O’Sullivan, 2006). In the movies and television specials, prisons are almost always maximum security, old, and noisy; jails are crowded and huge monstrosities; and juvenile facilities are depressing and havens for child predators. Perhaps as discouraging, community corrections, which is arguably—on the basis of our criteria here—the most professionalized sector of corrections, is rarely depicted in the mass media at all (Lutze, 2014).

Unfortunately, the mass media are not alone in misleading the public and students of criminal justice and criminology about corrections and correctional work. Academics have also tended to focus much of their attention on only the biggest and the “baddest” of correctional institutions and programs and the labor of their staff. Maximum security institutions and, to a lesser extent, metropolitan city jails have been showcased, though they are not the norm for most corrections in this country (e.g., see Conover, 2001; Hassine, 1996; Jacobs, 1977; Johnson, 2002; Morris, 2002; Sykes, 1958). Research on these institutions tends to focus on the negative, or what the institutions or staff are doing wrong, rather than on what is working well. Of course, it is understandable that the “negative” shines through when these particular institutions and their type are the center of attention: Given the makeup of their inmate populations and the likelihood that they are crowded and understaffed, there is much that is amiss in such places.

Predictably, work in probation and parole, much like the study of jail staff, receives short shrift by academics, who tend, like the media, to be preoccupied with what is “sexy,” violent, and controversial (Lutze, 2014). Given these depictions by the media and academics, it is hard to discern the truth about correctional institutions and programs and work in them because it is clear that the work is underappreciated, little understood, and hampered by misguided perceptions of it.

## Individual-Level Factors That Affect the Correctional Workplace

### LO 8.4 Describe how and why demographic factors affect corrections.

The demographics of workers in the field of corrections are varied and have evolved over the years. Here we will discuss issues such as race, ethnicity, gender, age, and military backgrounds.





## Perspective From a Practitioner

MICHAEL KLEIN, CORRECTIONAL OFFICER

**Position:** Correctional officer

**Location:** Indiana Department of Corrections,  
Wabash Valley Correctional Facility

**Education:** PhD in criminal justice and  
criminology

It was a curious bit of the informal slang that makes up the diction of prison life. I first heard it when I was a new officer. I think that I had been out of training for maybe 1 or 2 weeks at the time, and I was working a cell house. It was time for nightly cell searches. I walked into my ordered cell, and I started to search. Contraband. Nothing major. The offenders in the cell had eight hard-boiled eggs. It doesn't seem like a big deal to have eight hard-boiled eggs, but that amount of hard-boiled eggs could only have been smuggled out of the dining hall. I gathered up my booty and exited the cell. To be honest, I wasn't going to write the offenders up. I was just going to trash the eggs. So there I was, walking through the dayroom and holding my inconsequential find. All eyes were on me. One hundred offenders stared. I didn't really think much of it. I was new. I was used to offenders staring at me and sizing me up. An offender we called Shady moseyed up to my work station, where I had just set the eggs.

"You're taking their food?" he asked.

I shrugged. "I guess."

"Why?"

"Because they're not supposed to have it." Shady sighed.

"They don't have any money. They don't get any other zoom-zooms or wham-whams."

"What's that mean?" I asked.

"You know. Cakes. Commissary. Treats. Food. They don't get no other food. Don't take their eggs, man."

I then looked around the room. The offenders were staring at me in their curious way of looking while not looking.

It was my turn to sigh. "Okay."

Shady smiled, picked up the eggs, and walked them back to the cell. I could feel a ripple of approval flowing through the room. In training, they would tell us that the offenders would try to "fish" or scam us. I don't think that's what happened. I don't think they were trying to scam me. I think that the offenders approved of me giving back the eggs because Shady was right. The offenders in that cell had no family or friends. They had no one to send them money for zoom-zooms and wham-whams. The offenders approved because I had treated the offenders like *people*, not inmates. It was the first time I realized that the offenders in the prison weren't animals or monsters. They were just people. They just wanted a cake, a cookie, or an egg. They just wanted that one moment of daily sweetness. We all need zoom-zooms and wham-whams. There are a lot of epiphanies when you work with offenders, and these sudden moments of realization come out of nowhere. Training may not prepare you, but I found that if you just realize that the offenders are people caught in a bad situation, it will make the job a whole lot easier.

## Race or Ethnicity and Gender

Clearly, people should not be hired who are unqualified for a job, but if two people are roughly comparable in terms of skills and abilities, should the employer look for other personal features, such as race, gender, military background, or age, to determine who would be the best hire for the organization? Whether people will admit it or not, such matters do enter the calculus of who gets hired and promoted in organizations. (The topics of gender and race will be explored in greater detail in Chapters 10 and 11.) Left to their own devices and without the pressure that courts brought, the hiring of people of color and women did not occur in most criminal justice agencies to any extent until after the Civil Rights Act of 1964 was passed and modified in 1972 to include gender (Stohr & Collins, 2014). Before the passage of this law



and its modification, most employees in criminal justice agencies were very homogeneous in terms of race or ethnicity and gender, and today, more than 45 years later, this is still true in some organizations but to a much lesser extent or not true at all in others. Correctional organizations, like other criminal justice agencies, did not hire women (except to work with other women and then for less pay) or people of color until they were forced to by the Civil Rights Act and sometimes by lawsuits. One of the authors of this book worked as a correctional officer at an adult male prison in Washington State in 1983, and she was only the second woman hired there; the other had been hired only a month before. The warden told her that he had fought central office for years about hiring any people of color or women. When promoted to the counselor position the next year at that same prison, she was the first woman in the history of that institution to work as a counselor. At the time she worked there, only one Hispanic officer was employed, and the warden did not want him there. The warden told the author that he would never hire a Black man or woman for a correctional position.

Fast-forward 37 years, and women and racial-ethnic minority group members have integrated the correctional workplace at all levels and in every position. There are female correctional officers in maximum-security prisons and working as juvenile probation officers. There are racial-ethnic minority group members who serve as wardens and directors of corrections and who serve on the line in medium-security prisons. Is corrections fully integrated? The answer to that question is no, not fully, but the law and courts have made it possible for all qualified applicants to work in correctional organizations so that they better reflect the composition of their communities.

As the correctional workplace has diversified, the importance of race has grown, as it might affect workers' perceptions of one another and their labor (Camp, Steiger, Wright, Saylor, & Gilman, 2013). Employees of different racial and ethnic groups perceive that their job opportunities are shaped by their race or ethnicity and the race or ethnicity of others in their workplace. Managers, therefore, need to be cognizant of these perceptions and sensitive to them as they hire, train, and promote people.

As much as race, the change in gender composition of the employee workplace has had an effect on correctional workers' attitudes, perceptions, and behavior. We will discuss the effect of gender much more in Chapter 10, but suffice it to say here that research has found that female staff are as capable as men and bring a different supervisory style to the work from that of men (Britton, 2003; Jurik & Halemba, 1984). When one of the authors first started in corrections, several inmates and officers approached her and remarked on how the language used by staff and inmates had become less harsh since she and another woman had integrated the correctional officer workforce. She and the other female officer had done nothing to change the language; rather, those around them thought that the language should change because of their presence.

Regarding sexual harassment in the correctional workplace, research indicates that female workers are more likely to be harassed by male coworkers or supervisors than are male workers to be similarly harassed by women (Stohr, Mays, Beck, & Kelley, 1998). However, when inmates are harassed by staff, the harassment is not merely restricted to female victims and male offenders, nor is it limited to just staff (Marquart, Barnhill, & Balshaw-Biddle, 2001). Recent research indicates that female officers are much more involved, particularly in the more minor and "consensual" versions of sexual harassment of male inmates, than are their male counterparts. In an example of a serious *boundary violation* in this regard, a female nurse at McNeil Island prison in Washington State, hired in 2005, was fired in 2006 for allegedly having an intimate sexual relationship with a violent sex offender. Yet she continued to call him and have phone sex with him and visit him after her firing, and that was not even the worst of her behavior vis-à-vis this inmate: "In 2007 and 2008, she reportedly smuggled in 50 pornographic movies to the inmate and delivered crack cocaine to him 11 times" (Glenn, 2010, p. A4).

## Age

Correctional agencies will also consider the age of the applicant when making a hiring decision. None will hire below age 18, and many will require that an applicant be at least 21. Correctional agencies do not typically have an upper age limit for hiring, as police departments legally do; rarely will police departments hire people in their 30s, unless they have prior experience, and almost never will departments make a first hire of an officer who is in his or her 40s or older. Most of the time, the initial hires in corrections are people in their 20s and 30s. Depending on the job specified and the correctional clients worked with, correctional work can be a physically taxing and stressful job, which is why agencies will tend to target younger workers. When the job has fewer physical requirements (e.g., counseling and treatment programming or work as a probation or parole officer), the agency is much more likely to hire a worker in their 40s and older. What correctional and police agencies may fail to realize, however, is that more mature workers are able to bring a level of human experience and wisdom that might compensate for what they lack in physical agility in the management of inmates and clients.

## Prior Military Service

Another personal characteristic, beyond race or ethnicity and gender, of workers that tends to shape the correctional environment is prior military service. Such experience is usually considered favorably by correctional agencies seeking to hire. Some agencies will state such a preference explicitly, and others will provide extra points for military service when applications are assessed. Whether such military service better prepares workers to handle jobs in corrections is not a settled matter either, although the militaristic accoutrements of correctional work (i.e., the uniform, military titles, command structure) would certainly make former military officers feel at home in some correctional workplaces.

## Correctional Roles

**LO 8.5** Identify what correctional roles are.

### The Role Defined

Another aspect of the work that affects staff is the correctional role. The **role** of those working in a correctional workplace—or any other—is determined by what that person does on the job every day. The role of staff in corrections is determined by their job descriptions, their assigned duties, and the types of organization and clientele they work with. Therefore, correctional officers working in a living unit in a medium-security prison have a different role from that of probation officers working with lower level offenders in the community. The first role involves constant supervision and interaction with inmates who live a very restricted lifestyle in a secure institution. The second role, that of probation officer, also involves supervision and interaction (though it is less intense, as they are likely to see their clients less than daily) but also formally includes assistance to those they supervise. Both the prison and the probation officers usually work with convicted felons, but the prison inmates are more likely to be repeat felons and are usually convicted of more serious offenses. Although the first role involves the maintenance of both safety and security, for the prison officer, that usually means safety and security for other staff and other inmates, whereas for the probation officer, it usually means they are concerned about community members the officer's clients interact with. Both are likely involved in facilitating programming, but the prison officer is most often watching inmates engaged in it or escorting them to it—though

**Role:** What a person does on the job every day.

in some prisons, officers help deliver it—whereas the probation officer might recommend it or even run treatment groups. The prison officer might make recommendations regarding a person's placement in housing or work assignments in the secure facility, whereas a probation officer will monitor a probationer's engagement in them or counsel them about how to find them.

Both roles involve paperwork—loads of it—and both involve interactions with supervisors and accountability for what they do. For prison officers, they must adhere to the formal and informal rules that shape prison work, as those are provided by state law, policies and procedures, their administrators, and the subcultural values of coworkers and clients (Lipsky, 1980). For probation officers, they also must work within these formal and informal strictures, but in addition, they are often in constant contact with court actors, prosecutors, police officers, and jail workers, and these contacts, plus the clients on their caseload and their families, can shape the role they play on the job.

We clearly have overgeneralized in our comparison here of how a correctional officer role in a medium-security prison and that of a probation officer role in the community might differ and be similar. In those states and institutions where treatment is emphasized, some correctional officers are very engaged in providing treatment, not just supervising an inmate's involvement in it, for instance. Moreover, the role of some probation officers, particularly those who have intensive supervision caseloads with more serious offenders, may involve as much direct supervision as correctional staff provide in a prison. The point is that a role for staff is determined by many things, and it is defined by what people actually do in their work.

### Street-Level Bureaucrats

**Street-level bureaucrat:** The position of public-sector workers in entry-level positions in the criminal justice system who often have too much work, too few resources, and some discretion on how to do their work.

A **street-level bureaucrat** is what everyone who wants to work in a criminal justice agency starts out as. They are, according to Lipsky (1980), who first defined them, entry-level public-sector workers with too much work to do, too few resources to do it, and some discretion to choose how to do it. Police officers, public prosecutors and defenders, probation officers, and juvenile and adult correctional officers, along with teachers, social workers, and many other like jobs, are street-level bureaucrats. They often have clients who are poor, uneducated, and relatively powerless who need public services. Although clients in the correc-

tional environment are often involuntary, they still need the assistance of correctional staff in communities and institutions.

The reason we are mentioning street-level bureaucrats here is that the concept encapsulates the struggles correctional staff face. Although they have discretion, they often have to make Solomonian choices because their resources (time, treatment programming, space, etc.) are limited, and yet they have so many clients in need. Many of us would then argue that we should just increase the resources that correctional staff have, and consequently, there would be enough for all of the clients. Lipsky (1980), however, would argue that there will never be enough public-sector resources to meet all of the demand because other forces in the larger



Photo by Jessey Dearing for The Boston Globe via Getty Images

**Photo 8.3** A correctional officer addressing inmates. Correctional staff are often called upon to lead inmates and to instruct them on how the organization works.

environment of corrections will obstruct this increase (e.g., taxation reduction groups). So demand will never be met by supply, and that puts the street-level bureaucrat in an untenable position, forced to choose whom to provide resources to and whose needs to ignore while they do it.

## Hack Versus Human Service

The public may be less inclined to support the increased **professionalization** of correctional staff when they think their role is limited to the use of brute force, a role termed a *guard* in old-style Big House prisons and defined as a **hack** by current scholars (Farkas, 1999, 2001; Johnson, 2002). If a correctional officer is viewed by the public as a hack, or as a violent, cynical, and alienated keeper of inmates in a no-hope warehouse prison, then there would appear to be little need to encourage education or provide the training and pay that would elevate such officers to professional status. Yet there is reason to believe that most officers in prisons, jails, and juvenile facilities, and those who work in community corrections, actually regularly engage in **human service**, which serves as an alternative, more developed, and more positive role for correctional workers (Lombardo, 2001; Johnson, 2002).

Robert Johnson (2002) defined human service correctional officers as those who provide “goods and services,” serve as “advocates” for inmates when appropriate, assist them with their “adjustment” to prison, and use “helping networks” of staff to facilitate that adjustment (pp. 242–259). Such goods and services might involve food and clothing or medication, and advocacy might include helping inmates find jobs or apply for different housing or roommates, while adjustment assistance could include counseling them about how to handle difficult people or situations. Clearly, these kinds of activities are not necessarily in the job description of most officers who work in institutions, but they are often very much a part of what they do in reality and require that the officer be skilled and knowledgeable. When the public does not know about and the correctional organization does not recognize the alternative human service work role performed by correctional or juvenile justice officers and probation and parole officers, then, again, there is no perceived need to provide the training and pay that would be commensurate with that more developed professional role.

**Professionalization:** Includes the enforcement of professional standards for their new hires, such as a required college-level educational background, pay that is commensurate with job requirements, training that sufficiently prepares people for the job, and a code of ethics that drives the work practice.

**Hack:** A correctional officer in a prison who is a violent, cynical, and alienated keeper of inmates.

**Human service:** The provision by a correctional officer of goods, services, advocacy, and assistance to help inmates adjust.

## The Subculture and Socialization

### LO 8.6 Describe the influence of subculture and socialization on correctional officers.

The staff subculture in corrections, much like the roles, varies by facility and by type of organization. A subculture might be defined as the norms, values, beliefs, history, traditions, and language held and practiced by a group of people. (As indicated in Chapter 7, a subculture is just a subset of a larger organizational culture.) In corrections, those aspects of a subculture are shaped by what kind of facility or organization you have, what kind of clientele you are dealing with, and how isolated the group of people is from the rest of the community. The more isolated and the more exclusive the interaction of the group, the more likely it is that the subculture’s norms, values, beliefs and language are distinct from the larger community.

Historically, staff literally lived on the prison grounds with the inmates in prisons that were not open to the public or the media (Ward & Kassebaum, 2009). In such institutions, a distinct subculture was more likely to form than it is in today’s prisons, jails, or community corrections entities, where staff come and go with shifts and where visitors, lawyers, and the media have much more access than they did in years past. However, though correctional organizations of today are less likely to have as strong a staff subculture as they did in years past, this is not to say that they do not have a subculture.

## ? Ethical Issue

### WHAT WOULD YOU DO?

As a district manager of a probation and parole district, you notice that several of your staff seem burned out and stressed by their work. There are many more sick calls and more turnover than is normal for this size of workplace. You have bachelor's and master's degrees in criminal justice, and you know some of the research around these issues. You convene a meeting and note that your staff are reluctant at first to tell you what is wrong

but then start complaining about working conditions and about how they are treated—not by inmates but by management and other staff. What do you think would be the best approach to alleviate the stress and burnout by staff? Will this involve the need for you and other supervisors to give up some power in the workplace? What obstacles do you anticipate getting in the way of any change? Despite these obstacles, should you still do it?

## Subcultural Values

Subcultural values in the correctional setting are likely to have an effect on what staff do. Even today, correctional organizations and the people who work in them are somewhat cut off from the larger society by the nature of what they do and the need to keep some matters private for legal and security reasons. Moreover, staff in corrections have very intense experiences together, involving violence and strong emotions, experiences that are likely to bind staff together in an us-versus-them stance toward their clients and the larger society. It is for this reason that the role of staff in corrections is likely, for better or worse, to be influenced by the subcultural values of the group (e.g., see the discussion of subcultural values in Chapter 3).

Some subcultural values are positive in that they facilitate the ability of officers to do their work well (e.g., aiding your coworker and doing your own work). However, other subcultural values sound exactly like those expressed by inmates (e.g., “never rat” and the us-versus-them mentality) and serve to isolate the work and the workers, making them more likely to either participate in corrupt activities or to turn their heads when they witness these activities and to reinforce negative attitudes toward clients and the work.

## Staff Interactions With Inmates

**LO 8.7** Discuss why correctional staff might abuse power and experience stress and burnout.

## The Defects of Total Power

Many of those subcultural values are shaped by the power relationships between staff and inmates. In a classic work, Gresham Sykes (1958) described the relationship between staff and inmates in a maximum-security prison. Sykes noted that staff at this prison or any prison need inmates to comply with orders, as it would be difficult, if not impossible, to force inmates to do “what they otherwise wouldn’t” (the definition of power mentioned earlier; Dahl, 1961). Use of force to get inmates to comply with basic commands or orders would be inefficient, impossible, and counterproductive. For instance, if an inmate refused to make his bed or several inmates refused, it would be difficult for an officer to call in the emergency response team every time this happened, as it would mean that these team members would be pulled from their own duties. It would also make the officer in question, the one who



could not get the inmate to do something as simple as make their bed, appear like they could not handle the supervision of inmates. Moreover, force is sometimes impossible to use, at least daily, as the inmates outnumber staff in living units by sometimes as much as 50 or 100 to 1. There are ways to lock down living units and use gas and other measures to suppress disruptions, but if this had to be done on a regular basis, the prison would be in a constant uproar. And if force were used regularly for such trivial matters as making a bed, it is likely that inmates would align themselves more in opposition to staff, thus making the use of force counterproductive and perhaps requiring the greater use of it.

It is for these reasons that Sykes (1958) found that staff *needed* inmate compliance in prisons as much as inmates needed staff assistance. However, gaining compliance from inmates is not always easy. Staff, according to Sykes, have relatively little they can give to inmates to motivate them. They can sometimes get inmates better work or housing assignments, but the amount of these rewards is limited and their power to garner rewards for inmates may be likewise so. Moreover, staff do not have the ability to reward inmate compliance with what inmates want most: their freedom. Therefore, according to Sykes, given these realities, staff and inmates tend to engage in a “corrupted” relationship, whereby inmates comply with staff orders as long as staff overlook some violations, usually minor ones, by inmates. Such a relationship is most likely to develop between staff and those inmates who have the most power to control and gain compliance from other inmates.

Of course, Sykes was only describing the dynamics of the staff–inmate relationship in a New Jersey maximum-security prison in the 1950s, and much has changed since then—even in the most secure prisons. However, the informal side of the relationship between staff and inmates or clients in corrections is still there, and the need for an exchange relationship between the two is still part of that dynamic. In another classic work on public service workers generally, Michael Lipsky (1980) also recognized the fact that formally, staff control inmates, but informally, in prisons, schools, and social welfare departments, clients, even ostensibly powerless ones, also exercise some power over staff. By not complying with orders, failing to review information, or complaining about the service they receive, clients—even inmate clients—are able to force staff to adjust their behavior.

### The Correctional Role When Supervising Children

An example of the variability of the correctional role would be the form it takes when officers and counselors supervise children. Inderbitzin (2006) found, in a 15-month ethnographic study of staff members supervising a cottage of boys in a juvenile training facility (the juvenile version of a prison), that they “serve as their adolescent inmates’ guardians, keepers, counselors, and role models” (p. 431). Noting that the work with these serious and sometimes violent juveniles could be “frustrating, dangerous, often amusing, and occasionally rewarding” (p. 439), she noted that officers and counselors needed to be flexible and energetic in order to best cope with a volatile mix of duties that each day would bring. The tactics used by staff to gain the boys’ cooperation and to supervise them effectively ranged from the more punitive disciplinary actions all the way to reasoning with or cajoling



**Photo 8.4** Correctional officer working with youth in a Toledo, Ohio, detention center.



## Policy and Research

### STAFF STRESS, BURNOUT, AND TURNOVER

Work in corrections can be taxing and troublesome. Most correctional work in institutions is shift work and, when first started, involves late nights, sometimes all-night shifts, and weekend and holiday work. Even parole and probation officers are often called upon to visit clients in the evenings or on weekends. Needless to say, late-night shifts and weekend work play havoc with family life and children's school schedules, making family obligations challenging to meet.

It does not help matters that the people correctional staff supervise are often angry and upset or immature (Johnson, 2002). They are usually unhappy about being supervised and sometimes unpleasant to those correctional staff engaged in supervision.

Relatedly, people who are incarcerated or supervised in the community have often led impoverished and tragic lives, riddled with alcoholism, drug abuse, child abuse and neglect, unemployment, early deaths of loved ones, and homelessness. Many have inflicted serious harm on others, including their victims but also family and community members, and the guilt and regret they shoulder only exacerbate the negativity that surrounds them. Collectively, these tragic lives weigh heavily on the people experiencing them and can create a negative environment for themselves and for those who work with them (Johnson, 2002).

Correctional staff immersed in this environment and required to get unwilling people to do things they are not inclined to do often experience stress and the related consequences of it: burnout and turnover (Lambert, Hogan, & Tucker, 2009; Leip & Stinchcomb, 2013; Slate & Vogel, 1997; Stohr, Lovrich, & Wilson, 1994; Tewksbury & Collins, 2006). In a meta-analysis of studies on stress in prisons, Dowden and Tellier (2004) found that

those who adopted a more human service work attitude experienced less stress on the job than those who had a more punitive (i.e., hack) and custody orientation. In a study of five jails, Stohr, Lovrich, Menke, and Zupan (1994) found that those jails that invested in training and pay and that allowed staff to have a voice in how to do their work—all factors related to professionalism that we discussed earlier—were more likely to have greater job commitment by staff and less stress and turnover among them. Leip and Stinchcomb (2013) also discovered, in their analysis of data from a national survey of 1,924 line staff, that intention to turn over was reduced when the organizational climate was positive, when relationships between colleagues and supervisors were strong, and when correctional staff felt that they had a voice in how their workplace operated. Relatedly, in a study of a large county correctional system (nine facilities), Paoline, Lambert, and Hogan (2006) found that adherence to policies and standards (of the ACA, which emphasize professionalism, safety, and humanity in supervision) and positive and noncompetitive work relations with coworkers decreased the stress of workers. In their review of the literature on stress and burnout in correctional work, Finney, Stergiopoulos, Hensel, Bonato, and Dewa (2013) found that the organizational structure and climate had the greatest effect on stress and burnout in corrections.

### Discussion Questions

1. Why would the organizational structure and climate have an effect on stress and burnout?
2. Why would having a voice in how your job is done reduce stress?
3. How can correctional managers reduce stress for staff?

them and using humor. Some staff members tended to emphasize certain tactics over others, and some staff members tended to vary their own behavior as the situation required. Inderbitzin concluded that the staff who were most successful in their work, in that they were able to effectively supervise their charges, were those who took on a “people worker” (p. 442) role, or the human service role that was described earlier in this chapter (Farkas, 2000). Such staff members were also the most flexible, kind, creative, and respectful in their work with the adolescents.

## ? Ethical Issue

### WHAT WOULD YOU DO?

As an experienced counselor in a private, nonprofit juvenile halfway house, you notice that a few of the staff (whom you are buddies with) tend to denigrate some of the kids at the facility by calling them names (e.g., “little criminals” and worse), using profanity in reference to them, and even writing them up for minor issues when they try to object. You notice that a few of these kids seem depressed and lethargic lately, and you wonder if it could have anything

to do with how they are treated at the home. You don’t think the supervisor of the house (who also supervises other houses around the state) is aware of what is going on. You need this job and don’t want to alienate your friends, but you don’t want to continue to work at a place where kids are abused. What do you think would be the best course of action in such a situation? What do you think would be the likely consequences of your action or inaction?

## Abuse of Power

There are plenty of instances, both historically and currently, of correctional staff abusing their power over inmates and clients. We discuss such instances in some depth in several chapters in this book. It is important to mention here, however, that the abuse of power is more likely to occur in environments where staff behavior is not supervised closely enough by administrators or those outside the work environment, where inmates have little or no ability to contact the outside, where staff are not sufficiently trained, where there is a higher concentration of young and inexperienced staff, and where there is a higher concentration of disruptive inmates (Antonio, Young, & Wingard, 2009; Rideau, 2010; Stohr & Collins, 2014).

## Use of Force

The actual use of force—or being prepared to use such force—is part of correctional work. Correctional administrators interested in channeling its use in appropriate and legal ways ensure that staff are trained on when to escalate or deescalate its use on the basis of the situation (Hemmens & Atherton, 1999). In such training, the officer is taught to pay attention to cues that will tell them when to increase the force level and when not to do so.

Having said this, the use of force in any correctional environment depends on the type of institution or agency, the clients or inmates served, and the way they are managed. Generally speaking, there is less call for force in probation and parole work with adults or juveniles, though when engaged in arrests, it is not uncommon for community corrections officers to have to use force. Minimum-security prisons



**Photo 8.5** A demonstration of the use of force in a jail by the emergency response team in Montgomery County, Pennsylvania. Such teams are often called upon to subdue violent or disruptive inmates.

AP Photo/Trent Nelson

for adults or juveniles generally have less cause for use of force; inmates in such institutions are classified as less prone to violence or are on their way out of the system and so are more likely to rein in any violent inclinations. As one proceeds up the correctional security ladder, from minimum to medium and then to maximum, the need to use force increases, given the types of inmates incarcerated and the need to maintain stricter controls. It should also be mentioned, however, that in some prisons, under some wardens, the use of force is resorted to more frequently than under other wardens of similar prisons (Rideau, 2010). As Rideau (2010) observed after his 44-year incarceration in the Angola Prison in Louisiana during which he observed the management styles of many wardens (see the description of Rideau's experience in Chapter 7), those wardens who allow more openness between staff and inmates and the outside and who have more transparency about their management decisions are less likely to experience the need for the use of force in their facility. The more ready resort to force may be spurred by the type of inmates held (e.g., more violent) or the conditions of the facility (e.g., more crowded), but it could also just be a management tactic adopted by some wardens, as Rideau and others have argued (e.g., see Reisig, 1998).

## SUMMARY

**LO 8.1** Compare what makes work a profession as opposed to just a job.

- A profession is typified by five characteristics: (a) prior educational attainment involving college, (b) formal training on the job or just prior to the start of the job, (c) pay and benefits that are commensurate with the work, (d) the ability to exercise discretion, and (e) work that is guided by a code of ethics.

**LO 8.2** Describe the effect of growth in staff and clients or inmates.

- Staffing is increasing in the field, particularly for the role of corrections officers. Although it is still largely a male-dominated field, opportunities exist for women and people of color in many aspects of the job.

**LO 8.3** Explain the importance of education and training in the correctional field.

- Although many have worked long and hard to professionalize correctional work, there is every indication that most jobs in this area do not meet standard professional criteria.
- When correctional workers do not receive the requisite professional training and education they need to do their jobs in an appropriate manner, both clients and the community are likely to suffer.

**LO 8.4** Describe how and why demographic factors affect corrections.

- The research presented here and in Chapter 10 indicates that there are organizational factors that can be manipulated to improve this experience for staff so that they and their organization can realize their promise. Also, better pay, benefits, and training can be used to foster the greater development of professional attributes, such as education, and the consequent reduction in role ambiguity, turnover, and stress and increase in job satisfaction. The organizational culture can also be assessed to determine if certain characteristics are making it a more or less positive work environment for staff and a safe, secure, and developmental one for inmates.

**LO 8.5** Identify what correctional roles are.

- The correctional experience for staff is fraught with challenges and much promise. It involves a diverse role that encompasses work with juvenile and adult inmates in institutions as well as with offenders in the community. It is not as narrow a role as is commonly perceived by the public, and it includes many opportunities to effectuate a just incarceration or community supervision experience for inmates and clients.



- Many who labor in corrections undertake the human service role, focusing on the provision of goods and services; advocating for inmates, offenders, or clients; and assisting in their adjustment (Johnson, 2002).

**LO 8.6** Describe the influence of subculture and socialization on correctional officers.

- This research also indicates that the organization can do much to reduce the problems associated with the greater diversification of its staff. It can be open in its promotion practices so that false impressions regarding unfair advantage are not perpetuated and do not have a demoralizing effect on the workforce. It is also within the correctional organization's power to

prevent most sexual harassment, whether practiced by staff or inmates. In short, the promise of a positive correctional experience for staff is achievable, and as that perception seeps into the public consciousness, a correctional officer is much more likely to be perceived as a professional.

**LO 8.7** Discuss why correctional staff might abuse power and experience stress and burnout.

- Jobs in corrections are high stress and often require shift work and long hours. This can contribute to highly stressed workers. Lack of supervision may contribute to abuse of power and burnout. Often corrections workers need to be able to use force when warranted.

## KEY TERMS

Abu Ghraib 201

Hack 209

Human service 209

Power 200

Profession 194

Professionalization 209

Role 207

Stanford prison experiment 200

Street-level bureaucrat 208

## DISCUSSION QUESTIONS

1. Explain why work in corrections is often not regarded as professional in comparison with other commonly referenced professions.
2. Note which jobs in corrections are most sought after and why. Discuss how all correctional work might become more appealing to educated workers.
3. Review the events surrounding the Stanford prison experiment. If you were going to conduct such an experiment now, how would you go about it? What questions would you like to address with the experiment?
4. Explain and discuss the hack versus the human service role for staff. Which role do you think the public typically ascribes to correctional staff? Which role do you think is most commonly undertaken by staff?
5. Explain how the correctional organization can provide the right environment to reduce stress, turnover, and harassment of its staff.
6. Why is ethical behavior such a challenge in correctional work?
7. Consider the benefits and drawbacks of working in corrections. Do you plan on working in corrections? Why, or why not?





Photo by Leonard Ortiz/Digital First Media/Orange County Register via Getty Images

# 9

## Community Corrections Parole and Prisoner Reentry

### TEST YOUR KNOWLEDGE

Test your current knowledge of probation by answering the following questions as true or false. Check your answers on page 387 after reading the chapter.

1. Parole began in an Australian penal colony during the 1830s.
2. Parole and probation both are under court supervision.
3. Parolees are always scrutinized by a parole board to determine eligibility.
4. Most parolees reoffend within 3 years of release.
5. The parolees most likely to recidivate are property offenders.
6. Researchers agree that incarcerating too many people from the same neighborhood is detrimental because it causes more crime in the long run.
7. Parole success is determined similarly in all states; that is, no recidivism.
8. Sanctions such as halfway houses and electronic monitoring cut costs and increase parolee surveillance.

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 9.1 State the history and purpose of parole.
- 9.2 Identify the difference between mandatory and discretionary parole and how they both differ from unconditional release.
- 9.3 Describe the roles and duties of the parole board and parole board members.
- 9.4 Explain the issues involved in successful prisoner reentry into the community.
- 9.5 Compare and contrast halfway houses, house arrest, electronic monitoring, and global positioning devices.
- 9.6 State the legal challenges faced related to parole.

### THE PERILS OF PAROLE

On July 29, 1994, parolee Jesse Timmendequas lured 7-year-old Megan Kanka into his New Jersey home, where he beat, raped, and murdered her. Timmendequas, who was 33 years old at the time, had two previous convictions for sexually assaulting two young girls: one 5 years old and the other 7 years old. He was given probation on his first conviction but was sentenced to prison on his second. After his release from prison, Timmendequas lived with two other convicted sex offenders in Kanka's neighborhood. He confessed to investigating officers the next day and was arrested. He was subsequently convicted of kidnapping, aggravated assault, rape, and murder and was sentenced to death (commuted to life without parole in 2007 when New Jersey abolished the death penalty). The murder led to the introduction of Megan's Law, requiring law enforcement to disclose the location of registered sex offenders on probation or on parole.

What really upset people about this case (in addition to the brutal and needless death of a young girl) was that Timmendequas was a parolee who many thought should never have been released given his criminal record. It was cases such as this that led to efforts to eliminate parole, but short of locking up each and every offender until they die, we need to have some way of reintegrating them into the community. The recognition of this brute fact and the need to protect the community from predators such as Timmendequas is the daunting task of parole board members and parole officers. How do the authorities deal with conflicting public demands for protection and for less tax money being spent on corrections, and how do they deal with the vexing problems of trying to turn around the lives of parolees who have demonstrated their inability to control their behavior time and time again? These are some of the frustrating and troublesome problems we discuss in this chapter.



## Introduction: What Is Parole?

### LO 9.1 State the history and purpose of parole.

**Parole:** The release of prisoners from prison before completing their full sentences.

The term *parole* comes from the French phrase *parole d'honneur*, which literally means “word of honor.” In times when a person’s word really meant something, parole was used by European armies to release captured enemy soldiers on condition (their word of honor) that they would take no further part in hostilities (Seiter, 2005). The practice also existed for a brief time during the American Civil War, but it was soon realized that neither side was honoring it because paroled soldiers were back in the fight weeks after release (CivilWarHome.com, 2002). Modern **parole** refers to the release of convicted criminals from prison under the supervision of a parole officer before the completion of their full sentences on their promise of good behavior. Parole is different from probation in two basic ways. First, parole is an administrative function practiced by a parole board that is part of the executive branch of government, while probation is a judicial function. Second, parolees have spent time in prison before being released into the community, whereas probationers typically have not. In many states, both parolees and probationers are supervised by state probation and parole officers or agents; in others, they are supervised by separate probation or parole agencies.

### Brief History of Parole

The philosophical foundation of parole, as applied to convicted criminals, was laid by the superintendent of the Norfolk Island penal colony off the coast of Australia during the 1830s. The superintendent was a former British naval officer and geography professor named Alexander Maconochie, who had experienced imprisonment himself as a captive of the French during the Napoleonic Wars after his ship was wrecked (Morris, 2002). The horrendous conditions in the colony offended the compassionate, such as Augustus and Davenport-Hill, and the deeply religious Maconochie, who was a firm believer in the primacy of human dignity. As prison superintendent, he operated on three basic principles: (a) cruel and vindictive punishment debases both the criminal and the society that allows it, making both worse; (b) the purpose of punishment should only be the reformation (today we would say rehabilitation) of the convict; and (c) criminal sentences should be seen not in terms of time to be served but rather in terms of tasks to be performed. To implement his programs, Maconochie required indefinite prison terms rather than fixed determinate terms so that convicts would have an incentive to work toward release. As we have seen, the type of sentence Maconochie advocated is known today as an indeterminate sentence.

Maconochie was a realist, not a bleeding-heart idealist. The philosophy behind Maconochie’s correctional ideas and ideals is best stated by himself:

I am no sentimentalist. I most fully subscribe to the right claimed by society to make examples of those who break its laws, that others may feel constrained to respect and obey them. Punishment may avenge, and restraint may, to a certain limited extent, prevent crime; but neither separately, nor together, will they teach virtue. That is the province of moral training alone. (Quoted in Morris, 2002, p. xviii)

Maconochie’s point was that retribution may deter some offenders, and incapacitation is a temporary hold on a criminal career, but the real goal of corrections should

be to correct or, in Maconochie's words, "teach virtue." With respect to the third principle (tasks performed rather than time served), Maconochie devised a *mark system* involving credits earned for the speedy and efficient performance of these tasks as well as for overall good behavior. When a convict had accumulated enough credits, he could apply for a *ticket of leave* (TOL), which was a document granting him freedom to work and live outside the prison before the expiration of his full sentence. TOL convicts were free to work, acquire property, and marry, but they needed to appear before a magistrate when required, and church attendance was mandatory. Maconochie's system appeared to have worked very well. It supposedly was determined that only 20 of 900 of Maconochie's TOL convicts were convicted of new felonies (many more crimes were felonies during the 19th century than today), a recidivism rate of 2.2% that modern penologists are scarcely able to comprehend and many dismiss as too good to be true (Hughes, 1987). Nevertheless, and perhaps predictably, when Maconochie returned home to England and tried to institute his reforms there, he was accused of coddling criminals and relieved of his duties.

Nevertheless, the TOL system was adapted to the differing conditions in Britain under Walter Crofton, who devised the so-called **Irish system**. This system involved four stages, beginning with a 9-month period of solitary confinement, the first 3 months with reduced rations and no work. This period of enforced idleness was presumed to make even the laziest of men yearn for some kind of activity. The solitary period was followed by a period in which convicts could earn marks through labor and good behavior to enable their transfer to an open prerelease prison when enough marks had been accumulated and finally by a TOL. TOL convicts were supervised in the community by either police officers or civilian volunteers (forerunners of the modern parole officer), who paid visits to their homes and attempted to secure employment for them (Foster, 2006). Of the 557 men released on TOL under the Irish system during the 1850s, only 17 (3.05%) were revoked for new offenses (Seiter, 2005); again, if true, this is an extraordinary level of success.

Elements from both Maconochie's and Crofton's systems were brought into practice in the United States during the 1870s by Zebulon Brockway, superintendent of the Elmira Reformatory in New York. Brockway's system required indeterminate sentencing so that "good time" earned through good conduct and labor could be used to reduce inmates' sentences (Roth, 2006). However, there were no provisions for the supervision of offenders who obtained early release until 1930, when the U.S. Congress established the U.S. Board of Parole. Eventually parole came to be seen not as a humanistic method of dealing with "reformed" individuals but rather as a way of maintaining order in prisons by holding out the prospect of early release if convicts behaved well. It has also become a way of trying to reintegrate offenders back into the community by offering programs to prepare them for life outside the walls and as a partial solution to the problem of prison overcrowding. Because of these functions, parole became an essential and valued part of the American correctional system.



Steve Daggan

**Photo 9.1** The Norfolk (Australia) penal colony's superintendent during the 1830s, Alexander Maconochie, laid the philosophical foundation of parole, as applied to convicted criminals.

**Irish system:** A prison system used during the 19th century. This system involved four stages, beginning with a 9-month period of solitary confinement, the first 3 months with reduced rations and no work.

## The Modern Parole System

**LO 9.2** Identify the difference between mandatory and discretionary parole and how they both differ from unconditional release.

There were 874,800 state and federal parolees in the United States in 2016, 87% of whom were men. As shown in Figure 9.1, by race or ethnicity, 45% were white, 38% were Black, 15% were Hispanic, and 2% were “other” (Kaeble, 2018). It is noted that although the number of parolees incarcerated for drug offenses has fallen since 2015, these crimes remain a major reason for the United States’ huge level of incarceration.

The skyrocketing crime rates during the 1970s, 1980s, and early 1990s, many of the crimes committed by offenders on probation or parole, led to the “tough on crime” approaches to punishment discussed in the last chapter. The heinous kidnapping, rape, and murder of 13-year-old Polly Klaas by parolee Richard Davis and of 7-year-old Megan Kanka by parolee Jesse Timmendequas (in this chapter’s opening vignette) led to calls for the abolition of parole from a fearful public and their representatives. Further fueling the fire was the case of Willie Horton. Horton was serving a life sentence for murder, supposedly without the possibility of parole, when he was granted a weekend furlough (a temporary leave of absence from prison) that he used to commit an armed robbery, rape, and assault. With public outrage at a fever pitch, the federal government and a number of states abolished parole, substituting the return of the fixed determinate sentence that Maconochie so disliked. This system means that essentially prisoners are unconditionally released after the completion of their sentences without supervision or reporting requirements. This type of release is known as **unconditional release**. Inmates who either are required to “max out” their time or choose to max out rather than be placed on parole have less incentive to enter rehabilitation programs or to abide by prison rules. A number of states had already made the switch to mandatory sentences for their own reasons prior to these hideous crimes committed by Davis, Timmendequas, and Horton.

Abolishing parole sounds very tough and goes over quite well politically, but the reality is something different. Prisoners are still released early for reasons of overcrowding and

**Unconditional release:** A type of release from prison for inmates who have completed their entire sentences. They are released unconditionally—with no parole.

**FIGURE 9.1** Characteristics of Parolees

Source: Kaeble and Bonczar (2018).





budgetary concerns, but there is much less rational control today over who is released than there was in the past. It is discretionary parole that has really been abolished in some states in favor of mandatory parole. **Discretionary parole** is parole granted at the discretion of a parole board for selected inmates who are deemed to have earned it. Prisoners earn discretionary parole by avoiding disciplinary infractions and engaging in programs that prepare them for reentry into the community. Discretionary parole also allows parole board members to assess the probability of a given offender's risk to society on the basis of the crime for which they were incarcerated and on their criminal history, prison behavior, and psychological assessments.

**Discretionary parole:** Parole granted at the discretion of a parole board for selected inmates who have earned it.

**Mandatory parole**, on the other hand, is automatic parole for nearly all inmates in states that have systems of determinate (i.e., fixed) sentencing (Petersilia, 2000). This system is used by the federal government and about half of the states. Mandatory parole still has provisions for earning "good time" credits. Tragically, both Davis and Timmendequas were granted mandatory parole determined by mathematical norms generated by a computer solely on the basis of time served, that is, without any kind of consideration of the risk these individuals posed to society. Had their cases gone before a parole board, where board members can peruse parole applicants' criminal history and target violent and dangerous criminals for longer incarceration, odds are that neither man would have been released (Petersilia, 2000). Davis, for instance, had been released after serving only half of his 16-year sentence because of his supposed "good behavior" while institutionalized for a previous kidnapping, robbery, and assault of a woman (Skolnick, 1993). On the other hand, there is no such thing as mandatory furloughs, so what kind of "rational" discretion led to the decision to grant a vicious murderer like Willie Horton a weekend of freedom to go on a crime spree?

**Mandatory parole:** Automatic parole after a set period of time for nearly all inmates.

As we see from the graph in Figure 9.2, the percentage of offenders released on mandatory parole is dropping, while discretionary parole releases are increasing. In 2012, 41% entered parole through discretionary release versus 35% who entered through mandatory release (Maruschak & Bonczar, 2013). This reverses the trend from 1980 to 1999, when mandatory parole releases exceeded discretionary releases by about 22% (Hughes, Wilson, & Beck, 2001). Both discretionary and mandatory release parolees are supervised after release, but those 17% or 18% of inmates who are released at the expiration of their sentences (unconditional release) are not supervised. The graph in Figure 9.3 supports those who favor discretionary parole and the elimination of mandatory parole. Note that in 1999, about 52% of discretionary parolees successfully completed parole, while only about 32% of mandatory parolees did. This discrepancy was still very much in evidence in 2008 (Paparozzi & Guy, 2009).

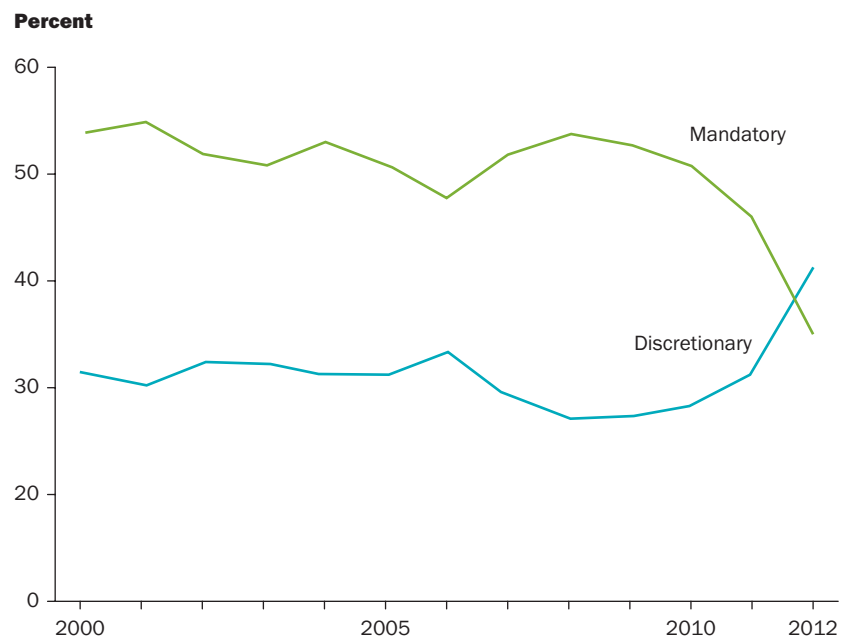
## Parolee Recidivism

A nationwide study of parolee recidivism looked at nearly 300,000 parolees from 15 states released from prison in 1994 (Langan & Levin, 2002). Within 3 years of release, 67.5% were rearrested for new offenses, with the entire sample accumulating an astounding 744,000 new offenses during those 3 years. New arrests included 2,871 for murder, 2,444 for rape, 21,245 for robbery, and 54,604 for assault. Property offenders had the highest rate of recidivism (more than 70%), while murderers (40.7%) and sex offenders (41.4%) had the lowest recidivism rates. These rates do not mean, for instance, that 40.7% of murderers committed another murder—they refer to further arrests for any type of crime.

As we saw in Chapter 1, these data are consistent within a percentage point or two. A Bureau of Justice Statistics study (Durose, Cooper, & Snyder, 2014) of recidivism among

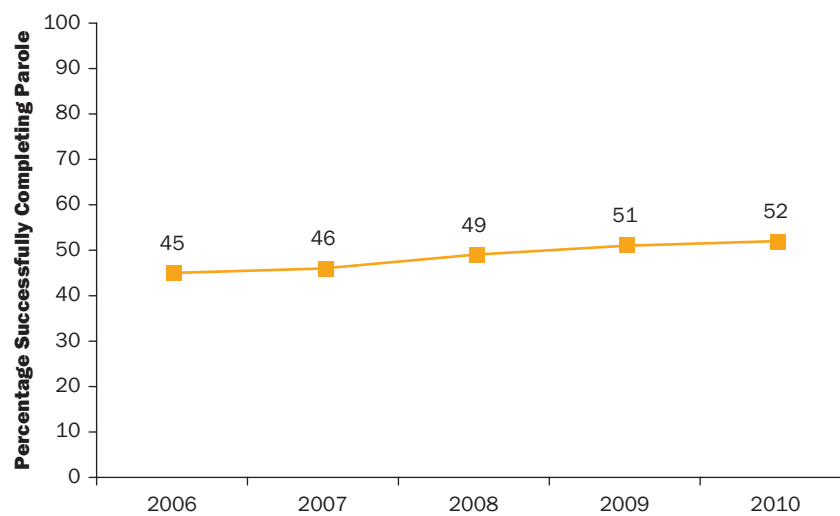
■ **FIGURE 9.2** Percentages of Offenders Paroled by Type of Parole, 2000–2012

Source: Maruschak and Bonczar (2013).



■ **FIGURE 9.3** Percentages of Parolees Successfully Completing Parole

Source: Glaze and Bonczar (2011).





## In Focus 9.1

### EXAMPLE OF PAROLE CONDITIONS

When prisoners are released from prison and placed on parole, there are a number of strict conditions they must follow. Below are examples of these conditions from the state of Nevada. Conditions are pretty standard in all states, but the extent to which parolees are held to them, and the severity of consequences for not doing so, vary from jurisdiction to jurisdiction.

#### State of Nevada

#### Board of Parole Commissioners

#### Parole Agreement

On the day of \_\_\_\_\_  
 \_\_\_\_\_ was sentenced by  
 \_\_\_\_\_, District Judge of the  
 \_\_\_\_\_ Judicial District Court  
 in and for the County of \_\_\_\_\_,  
 State of Nevada, to imprisonment in the  
 Nevada State Prison System, for the crime  
 of \_\_\_\_\_ for a term of  
 \_\_\_\_\_.

The Board of Parole Commissioners, by virtue of the authority vested in it by the laws of the State of Nevada, hereby authorizes the Director of the Department of Prisons to allow said on the day of, or as soon thereafter as a satisfactory program can be arranged and approved by the Division of Parole and Probation, to go upon parole outside the prison buildings and enclosure, subject to the following conditions:

**Reporting/Release:** Upon release from the institution, you are to go directly to the program approved by the Division of Parole and Probation, and shall report to the Supervising Officer or other person designated by the Division. You are required to submit a written Monthly Report to your Supervising Officer on the first of each month on forms supplied by the Division of Parole and Probation. This report shall be true and correct in all respects; in addition, you shall report as directed by your Supervising Officer.

1. **Residence:** You shall not change your place of residence without first obtaining permission from your Supervising Officer, in each instance.
2. **Intoxicants:** You shall not drink or partake of any alcoholic beverages (whatsoever) (to excess). Upon request by any Parole or Peace Officer, you shall submit to a medically recognized test for blood/breath alcohol content. Test results of .10 blood alcohol or higher shall be sufficient proof of excess.
3. **Controlled Substances:** You shall not use, purchase nor possess any narcotic drugs, nor any dangerous drugs, unless first prescribed by a licensed physician; you shall immediately notify your Supervising Officer of any prescription received. You shall submit to narcotic or drug testing as required by any Supervision Officer.
4. **Weapons:** You shall not possess, own, carry, or have under your control, any type of weapon.
5. **Associates:** You shall not associate with individuals who have criminal records or other individuals as deemed inappropriate by the Division. You shall not have any contact with persons confined in a correctional institution unless specific written permission has been granted by your Supervising Officer and the correctional institution.
6. **Cooperation:** You shall, at all times, cooperate with your Supervising Officer and your behavior shall justify the opportunity granted to you by this parole.
7. **Laws and Conduct:** You shall comply with all institutional rules, municipal, county, state and federal laws, and ordinances; and conduct yourself as a good citizen.
8. **Out-of-State Travel:** You shall not leave the State without first obtaining written permission from your Supervising Officer.

(Continued)

(Continued)

- 9. Employment/Program: You shall seek and maintain legal employment, or maintain a program approved by the Division of Parole and Probation and not change such employment or program without first obtaining permission.
- 10. Supervision Fees: You shall pay monthly supervision fees while under supervision of the Division.
- 11. Fines/Restitution: You shall pay all Court-ordered fines, fees and restitution on a schedule approved by the Division.
- 12. Special Conditions: \_\_\_\_\_
- 13. Search: You shall submit to a search of your person, automobile, or place of residence, by a Parole Officer, at any time of the day or night without a warrant, upon reasonable cause as ascertained by the Parole Officer.
- 14. Your Parole Expiration Date is:
- 15. Credits: You shall receive no credit, whatsoever, on this sentence should you be absent from supervision at any time and be considered an absconder.

This parole is granted to and accepted by you, subject to the conditions stated herein, and with the knowledge that the Board of Parole Commissioners has the power, at any time, in case of violation of

the conditions of parole to cause your detention and/or return to prison. Your right to vote has been revoked and may be restored upon Honorable Discharge from parole.

**APPROVED BY THE BOARD OF PAROLE COMMISSIONERS**

**Chief Parole Officer** \_\_\_\_\_  
**Dated:** \_\_\_\_\_

**AGREEMENT BY PAROLEE**

I do hereby waive extradition to the State of Nevada from any state in the United States, and from any territory or country outside the continental United States, and also agree that I will not contest any effort to return me to the United States or the State of Nevada.

I have read or had read to me, the conditions of my parole, and I fully understand them and I agree to abide by and strictly follow them. I fully understand the penalties involved should I, in any manner, violate the foregoing conditions.

**Parolee** \_\_\_\_\_

**Officer Witness** \_\_\_\_\_  
**Dated:** \_\_\_\_\_

*Source: State of Nevada.*

the 405,000 state prisoners released in 30 states in 2005 and followed for a 5-year period found almost identical results. Among the results were the following:

- About two thirds (67.8%) of released prisoners were arrested for new crimes within 3 years, and more than three quarters (76.6%) were arrested within 5 years.
- Within 5 years of release, 82.1% of property offenders were arrested for new crimes, compared with 76.9% of drug offenders, 73.6% of public order offenders, and 71.3% of violent offenders.
- More than a third (36.8%) of all prisoners who were arrested within 5 years of release were arrested within the first 6 months after release, with more than half (56.7%) being arrested by the end of the first year.
- About two in five (42.3%) released prisoners were either not arrested or arrested once during the 5 years after their release.
- A sixth (16.1%) of released prisoners were responsible for nearly half (48.4%) of the nearly 1.2 million arrests that occurred during the 5-year follow-up period.
- An estimated 10.9% of released prisoners were arrested in states other than those that released them during the 5-year follow-up period.

Solomon, Kachnowski, and Bhati (2005) analyzed a subset of 38,624 parolees for whom the type of release was known. There were surprisingly few differences among the parolees other than the fact that discretionary release parolees had a lower average number of prior arrests (7.5) than mandatory parolees (9.5) or unconditionally released parolees (9.6). Among those rearrested after release, unconditionally released parolees were rearrested an average of 9.9 months after release, mandatory parolees an average of 10.4 months, and discretionary parolees an average of 11.5 months. The average time served, as one would expect, was also noticeably different, with the unconditionally released parolees serving an average of 32 months, mandatory parolees an average of 18.5 months, and discretionary parolees an average of 21.3 months. This suggests that supervision is particularly vital in the early stages of the parole process, when parolees are still struggling to find their way back into their communities and are thus most susceptible to returning to their criminal ways.

Figure 9.4 provides an example of a mandatory parole release form showing the “word of honor” promises parolees are supposed to abide by in Alaska. The listed conditions are fairly standard from state to state and are indistinguishable from the conditions set for probationers. These are general conditions with which all parolees must comply, but often there are additional conditions set for individual offenders. These conditions may be things such as requiring alcoholics or drug addicts to enroll in and attend certain programs and requiring sex offenders to avoid all contact with children or to refrain from accessing Internet pornography. These additional conditions will likely be set by the parole board and/or by each individual parole officer after reviewing each parolee’s case. It is then the responsibility of the parole officer to make sure that the parolee follows the conditions that have been mandated.

#### ■ FIGURE 9.4 Example of a Mandatory Parole Form

Source: State of Alaska.

| STATE OF ALASKA  | DEPARTMENT OF CORRECTIONS |
|--|---------------------------|
| <b><u>ORDER OF MANDATORY PAROLE</u></b>  |                           |
| Parolee: _____ DOB: _____ OTIS# _____ Released: _____ Supv. Expires: _____   |                           |
| *****  |                           |
| The following terms and conditions are effective on the release date shown on the CERTIFICATE OF GOOD TIME AWARD (AS 33.20.030) for all prisoners released pursuant to AS 33.16.010 or AS 33.20.040. I understand I am required by law to abide by the conditions imposed, whether or not I sign these conditions. The Parole Board may have me returned to custody at any time when it determines a condition of parole has been violated.  |                           |
| <b><u>CONDITIONS OF MANDATORY PAROLE</u></b>   |                           |
| 1. REPORT UPON RELEASE: I will report in person no later than the next working day after my release to the P.O. located at: _____ and receive further reporting instructions. I will reside at: _____  |                           |
| 2. MAINTAIN EMPLOYMENT/TRAINING/TREATMENT: I will make a diligent effort to maintain steady employment and support my legal dependents. I will not voluntarily change or terminate my employment without receiving permission from my Parole Officer (P.O.) to do so. If discharged or if employment is terminated (temporarily or permanently) for any reason, I will notify my P.O. the next working day. If I am involved in an education, training, or treatment program, I will continue active participation in the program unless I received permission from my P.O. to quit. If I am released, removed, or terminated from the program for any reason, I will notify my P.O. the next working day. |                           |

(Continued)



■ FIGURE 9.4 (Continued)

3. REPORT MONTHLY: I will report to my P.O. at least monthly in the manner prescribed by my P.O. I will follow any other reporting instructions established by my P.O.
4. OBEY LAWS/ORDERS: I will obey all state, federal and local laws, ordinances, and court orders.
5. PERMISSION BEFORE CHANGING RESIDENCE: I will obtain permission from my P.O. before changing my residence. Remaining away from my approved residence for 24 hours or more constitutes a change in residence for the purpose of this condition.
6. TRAVEL PERMIT BEFORE TRAVEL OUTSIDE ALASKA: I will obtain the prior written permission of my P.O. in the form of an interstate travel agreement before leaving the State of Alaska. Failure to abide by the conditions of the travel agreement is a violation of my order of parole.
7. NO FIREARMS/WEAPONS: I will not own, possess, have in my custody, handle, purchase or transport any firearm, ammunition or explosives. I may not carry any deadly weapon on my person except a pocket knife with a 3" or shorter blade. Carrying any other weapon on my person such as hunting knife, axe, club, etc. is a violation of my order of parole. I will contact the Alaska Board of Parole if I have any questions about the use of firearms, ammunition, or weapons.
8. NO DRUGS: I will not use, possess, handle, purchase, give or administer any narcotic, hallucinogenic, (including marijuana/THC), stimulant, depressant, amphetamine, barbiturate or prescription drug not specifically prescribed by a licensed medical person.
9. REPORT POLICE CONTACT: I will report to my P.O., not later than the next working day, any contact with a law enforcement officer.
10. DO NOT WORK AS AN INFORMANT: I will not enter into any agreement or other arrangement with any law enforcement agency which will put me in the position of violating any law or any condition of my parole. I understand that the Department of Corrections and Parole Board policy prohibits me from working as an informant.

## Parole Boards

### LO 9.3 Describe the roles and duties of the parole board and parole board members.

**Parole board:** A panel of people presumably qualified to make judgments about the suitability of a prisoner to be released from prison after having served some specified time of their sentence.

Parole boards are required only in states that use a discretionary system of granting parole. A **parole board** is a panel of people presumably qualified to make judgments about the suitability of a prisoner to be released from prison after having served some specified time of their sentence. This is termed an inmate's parole eligibility date, which is the earliest possible time they can be released from prison. Board members are appointed by the governor for fixed (renewable) terms in most states. Some states mandate that a board appointee be well versed in criminology and corrections, while other states have no such requirement. Although many board members serve on a part-time basis and collect a minimal salary and per diem expenses, chairpersons and vice chairpersons are full-time salaried individuals in nearly all states (Abadinsky, 2009).

In making their decision of whether to grant or deny parole, board members assess a variety of information about the inmate and interview them at a parole hearing to discuss the assessed information and to gain some face-to-face insight about the inmate. Among the information considered by the parole board members to help them make their decision are the following:

- The nature of the offense for which the inmate is currently incarcerated.
- The criminal history of the inmate.
- Indications by word and/or deed that the inmate is repentant.

- The inmate's mental health via psychological and psychiatric reports.
- The original presentence investigation report.
- Reports of institutional conduct, including disciplinary reports and participation in religious and rehabilitative programs.
- The inmate's parole plan—for example, where does the inmate plan to reside, does the inmate have guaranteed or possible employment waiting, and does the inmate enjoy a good support system in the community?
- Statements made by others supporting (e.g., family members, counselors, ministers) or opposing (e.g., the victim, prosecutor, other criminal justice officials) the inmate's request for parole.

Of course, parole boards are composed of humans who have their own reasons for granting or denying parole. Although a majority vote wins the day, there are always members (especially chairpersons) who wield more influence than others. They can never be certain who will or will not fail on parole, but they know that on average about two thirds will fail. They are thus likely to err on the side of caution (not releasing someone who would have made it successfully) than to endanger the public and embarrass themselves by releasing someone who then proceeds to commit heinous and highly publicized crimes such as those committed by Davis, Timmenedequas, and Horton.



## Perspective From a Practitioner

LISA GROWETTE BOSTAPH, PAROLE COMMISSIONER

**Position:** Parole commissioner for the Idaho Commission on Pardons and Parole

**Education:** PhD in criminal justice from the University of Cincinnati

### How long in current position and any previous criminal justice experience?

I have served as a parole commissioner for the past 2 years, which is a part-time appointment. My full-time position is associate professor of criminal justice and graduate program coordinator for the Department of Criminal Justice at Boise State University in Boise, Idaho. Earlier in my career, I worked as a team member in a batterer treatment program; ran a crime scene crisis intervention program for victims of domestic violence, sexual assault, and child abuse; and worked as a victim and witness coordinator for a prosecutor's office, all in Minnesota.

### What are the duties and responsibilities of being a parole commissioner?

A parole commissioner is charged with reviewing all applicable case material (police reports, presentence investigation reports, criminal history, previous supervision periods, institutional behavior, treatment case notes, and any applicable evaluations and/or assessments) in preparation for making a decision regarding parole during an open hearing with the offender. In addition, we review all offender requests for reconsideration of previous decisions and commutation of sentences plus all requests for pardons.

### What are the characteristics and traits most useful in your line of work?

In terms of reviewing all of the documents, anyone serving on the commission needs to have a good attention span and be detail oriented, empathetic, and nonjudgmental. Offenders come from all walks

(Continued)

(Continued)

of life, backgrounds, and demographic categories. To be fair, you must be able to withhold any preconceived notions or stereotypes one may hold about people in any of these categories. This also applies to conducting the interviews during the hearings. To be a successful interviewer, you must be a good listener. Asking questions is not the most important aspect of interviewing; the ability to *hear* what is being said and respond appropriately is of utmost importance.

**Please describe your typical workday:**

In Idaho, the Parole Commission is a part-time body. There are five of us who serve in rotation on three-person panels hearing cases for 2 weeks of every month. Parole commissioners in Idaho review case materials for all offenders eligible for parole, then conduct interviews of the offenders during open hearings. We also hear from supporters for the offender and from the victim(s) of the crime at these hearings. Once the interview and statements are completed, we deliberate in private to reach a unanimous decision regarding parole for the offender. We may make one of the following

decisions: offer a parole date, deny parole and set another hearing at a later date for reconsideration, or deny parole and pass the offender to his or her full-term release date (meaning that the offender serves his or her entire sentence in prison). After reaching a decision, we reconvene the open hearing and announce our decision. In one day, we generally hear 25 cases, which translates into roughly 125 cases in the 1 week that each three-person panel serves during a month. If we cannot reach a unanimous decision, the hearing is continued to our quarterly hearings when all five commissioners hear cases (majority decision prevails in these hearings).

**What is your advice to someone who wants to enter your field?**

For most parole commissions or boards, you must be appointed by the governor, so it is not something that they advertise or for which you apply. That being said, performing well in your chosen career and serving on criminal justice-related boards and committees will demonstrate your commitment to the field.

## What Goes In Must Come Out: Prisoner Reentry Into the Community

### LO 9.4 Explain the issues involved in successful prisoner reentry into the community.

Numerous commentators of all political persuasions consume an incredible amount of space writing about America's imprisonment binge, but rarely outside of the academic literature do we find much concern about the natural corollary of the binge: What goes in must come out. Travis (2005) introduced us to the idea of prison reentry in this way: "Reentry is the process of leaving prison and returning to society. Reentry is not a form of supervision, like parole. Reentry is not a goal, like rehabilitation or reintegration. Reentry is not an option. Reentry reflects the iron law of imprisonment: they all come back" (p. xxi). "They all come back" refers to prisoners returning to the communities from which they came.

Understanding the process of prisoner reentry and reintegration into the community is a very pressing issue in corrections. In 2016, there were 457,100 offenders who entered American state and federal prisons, and 456,000 left them (Kaeble, 2018). Except for those few who leave prison in a pine box or who make their own clandestine arrangements to abscond, all prisoners are eventually released back into the community. Unfortunately, among this huge number, one in five will leave with no postrelease supervision, rendering "parole more a legal status than a systematic process of reintegrating returning prisoners" (Travis, 2000, p. 1). Pushing convicts out the prison door with \$50, a bus ticket to the nearest town, and a fond farewell is a strategy almost guaranteeing that the majority of them will

return. With the exception of convicts who max out, prisoners will be released under the supervision of parole officers charged with monitoring offenders' behavior and helping them readjust to the free world.

Because parolees have been in prison, and are thus on average more strongly immersed in a criminal lifestyle, we should expect them to be more difficult to supervise than probationers, and they are, and we should expect them to have lower success rates, and they do. While Glaze and Palla (2005) reported a success rate of 60% for probationers in 2004, the same figure for successful completion of parole was only 46% (although note the difference between the success rates of discretionary versus mandatory release parolees in Figure 9.3 and the 58% success rate in 2012 noted earlier in this chapter).

The longer people remain in prison, the more difficult it is for them to readjust to the outside world. Inmates spend a considerable amount of time in prison living by a code that defines as "right" nearly everything that is "wrong" on the outside. Adherence to that code brings them acceptance by fellow inmates as "good cons." Over time, this code becomes etched into an inmate's self-concept as the prison experience becomes their comfort zone. When inmates return to the streets, they do not fit in, they feel out of their comfort zone, and their much sought-after reputation as a good con becomes a liability rather than an advantage. As prison movie buffs are aware, these readjustment problems were dramatically presented in the suicide of Brooks in *The Shawshank Redemption* and in the final crazy hurrahs of Harry and Archie in *Tough Guys*.

Brooks, Harry, and Archie all were old men who had served very long periods of incarceration and who had thoroughly assimilated the prison subculture by the time of their release into an alien and unaccepting world. Thus, one recommendation might be to reduce the lengths of prison sentences so that those unfortunate enough to be in them do not have time to become "prisonized." Such a recommendation gains support from statistics showing that the shorter the time spent in prison, the greater the chance of success on parole (Travis & Lawrence, 2002), but if we are looking for something causal in those statistics we are surely sniffing around the wrong tree. Shorter sentences typically go to those committing the least serious crimes and who have the shortest arrest sheets; such people are already less likely to commit further crimes than those who commit the more serious crimes and have long rap sheets. It is not for nothing that former U.S. attorney general Janet Reno called prisoner reentry "one of the most pressing problems we face as a nation" (as cited in Petersilia, 2001, p. 370).

### The Impact of Imprisonment and Reentry on Communities

Because crime is highly concentrated in certain neighborhoods, a disproportionate number of prison inmates come from and return to those same neighborhoods. There are those who believe that although high incarceration rates may reduce crime in the short run, the strategy provides only a temporary reprieve, and it will eventually lead to higher crime rates by weakening families and communities and reduce the supervision of children (DeFina & Arvanites, 2002). According to this body of literature, the loss of individuals concentrated in certain communities reduces community organization and cohesion, disrupts families economically and socially, and adds many other problems that will eventually lead to more crime than would have occurred if offenders had been allowed to remain in the community. Clear, Rose, and Ryder's (2001) interviews with residents of high-incarceration neighborhoods is in this tradition. They hypothesized that when public control (incarceration) occurs at high levels, private control (informal control) functions at low levels and ultimately results in more crime. Clear and colleagues did not deny that neighborhood residents were better off and safer when the bad apples were pulled from the shelf and

shipped off to prison. This implies the opposite of their hypothesis, however. That is, when private control functions at low levels, public control occurs at high levels.

There can definitely be many negative impacts on the community, especially financial impact on families, when working fathers are removed from it. However, a Bureau of Justice Statistics report (Mumola, 2000) showed that 48% of imprisoned parents were never married and that 28% of those who were ever married were divorced or separated, and very few men lived with their children prior to imprisonment. Moreover, the majority of parents had been convicted of violent or drug crimes, and 85% had drug problems, which makes it difficult to see how the presence of antisocial fathers in the community somehow contributes to private control rather than detracts from it (Rodney & Mupier, 1999). For instance, a longitudinal study of 1,116 British families showed that the presence of a criminal father in the household strongly predicted antisocial behavior of his children, and the harmful effects increased the more time he spent with the family (Moffitt, 2005). Another large-scale study found that when an antisocial father resides with the mother and offspring, there is more risk to children than when the father does not, because “children experience a double whammy of risk for antisocial behavior. They are at genetic risk because antisocial behavior is highly heritable [greatly influenced by genetic factors]. In addition, the same parents who transmit genes also provide the child’s environment” (Jaffee, Moffitt, Caspi, & Taylor, 2003, p. 120).

### What Makes for a Successful Reentry?

Reentry is a process of reintegrating offenders back into their communities regardless of whether they were integrated into it in a prosocial way before they entered prison. Part of that process is preparing offenders to reenter by providing them with various programs that target the risks they pose to the community (e.g., anger management classes) and their needs (e.g., educational and vocational programs). Unfortunately, one of the prices we have paid for the prison expansion during recent years is “a decline in preparation for the return to the community. There is less treatment, fewer skills, less exposure to the world of work, and less focused attention on planning for a smooth transition to the outside world” (Travis & Petersilia, 2001, p. 300). Yet there is always an abundance of suggestions about what we should be doing to prepare inmates to reenter free society. If these programs were to be actually implemented, and if they do what they are supposed to do, parolees may have a fighting chance of remaining in the community. The U.S. Department of Justice (Solomon, Dedel Johnson, Travis, & McBride, 2004) lists three programmatic phases believed necessary for reentry with a chance of success:

**Phase 1—Protect and Prepare:** The use of institution-based programs designed to prepare offenders to reenter society. These services include education, treatment for mental health and substance abuse issues, job training, mentoring, and a complete diagnostic and risk assessment.

**Phase 2—Control and Restore:** The use of community-based transition programs to work with offenders prior to and immediately following their release from jail or prison. Services provided in this phase include education, monitoring, mentoring, life skills training, assessment, job skills development, and mental health and substance abuse treatment.

**Phase 3—Sustain and Support:** This phase uses community-based, long-term support programs designed to connect offenders no longer under the supervision of the justice system with a network of social service agencies and community-based organizations to provide ongoing services and mentoring relationships.

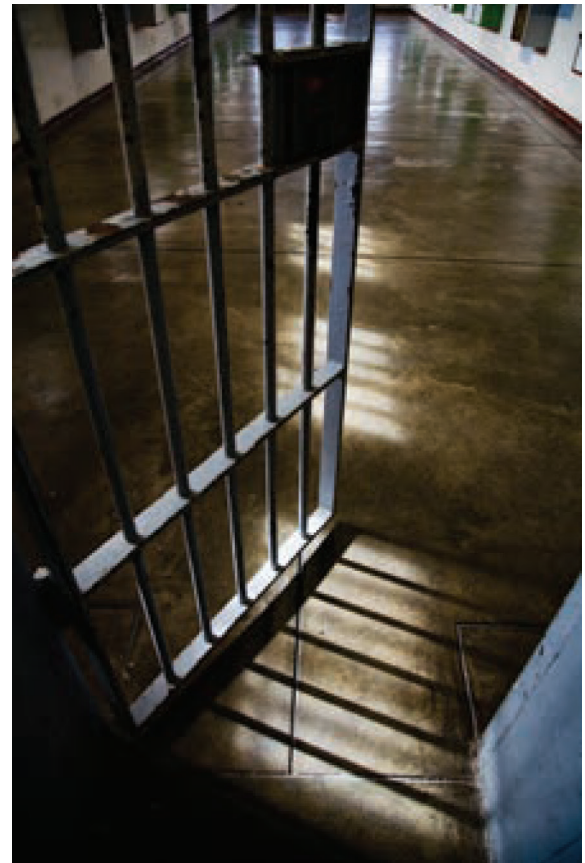


The above programming strategy is an ideal rather than a reality most of the time, but many offenders released from incarceration do have access to some parts of each of these phases, and some manage to successfully complete parole. To be successful in Phase 1, offenders must be willing to apply themselves to the training and programming offered to them. They need to make a conscious decision to set long-term goals and convince themselves that a criminal career is not for them. Obviously, these are decisions that are typically made only by individuals not fully immersed in the criminal lifestyle. In Phase 2, they need to implement those decisions in the real world where it counts and not get sidetracked either by the frustration generated by the monitoring they are subjected to by their parole officers or by the criminal opportunities that may present themselves. Phase 3 may be the most difficult of all for some offenders who rely on authoritative figures to give their lives direction. This is why it is so important for community corrections officers to plug their clients into agencies outside the criminal justice system that are able to address parolee needs prior to termination of supervision.

Perhaps the most important tool for the successful reintegration of offenders who want to go straight is employment. Unfortunately, the typical offender is not prepared for much other than a low-skill manufacturing job, the kind of job the United States has been losing in truly staggering numbers because of technological advances and/or companies' moving operations overseas. Job prospects are thus fairly limited unless offenders can improve themselves educationally. Solomon and colleagues (2004) reported that 53% of Hispanic inmates, 44% of Black inmates, and 27% of white inmates have not completed high school or obtained a GED, as opposed to 18% of the general population. In addition to their general lack of preparedness, employers are understandably reluctant to hire ex-convicts. Even taking into consideration lack of preparedness and employer reluctance to hire offenders, economists find that incarceration reduces employment opportunities by about 40%, wages by about 15%, and wage growth by about 33% (Western, 2003). There is no doubt that once offenders embark on a criminal career, it is extremely difficult for them to desist.

### Determining Parole “Success”

Although one would not think so, defining parole success is difficult because there is no agreed-on standard by which we can judge success. Does it mean (a) a completed crime-free or technical violation-free period of parole, or does it mean (b) the offender was released from parole without being returned to prison despite their behavior while on parole? It obviously means vastly different things in different states because parole “success” rates ranged from 19% in Utah to 83% in Massachusetts in 1999 (Travis & Lawrence, 2002). Does this mean that Utah criminals are more than 4 times more resistant to taking the straight and narrow road than Massachusetts criminals or that Massachusetts has much better programming and professional parole officers? Of course not; it most likely means that conservative Utah follows our first definition of success, while liberal Massachusetts follows our second definition. Given the national average rate of 42% that year, it is plain that many parolees are forgiven many technical violations, or perhaps even a petty arrest or two, in most states.



**Photo 9.2** A prison gate stands open both to admit new inmates and to allow them to leave when they have completed their time.

© iStockphoto.com/antb

Thus, “success” has as much or more to do with the behavior of the parole authorities in different jurisdictions as it does with the behavior of parolees. When we speak of “success,” then, we are generally speaking in middle-of-the-road terms in which certain misbehaviors are forgiven occasionally in the interest of maintaining parolees on a trajectory that is at least somewhat positive.

## Parole Violations and Graduated Sanctions

**LO 9.5** Compare and contrast halfway houses, house arrest, electronic monitoring, and global positioning devices.

During these days of tight budgets, a factor that may have played a large part in the increase in parole “success” rate—from 46% in 2004 to 58% in 2012, noted earlier—is the increasing reluctance of states to reincarcerate offenders for minor infractions than was heretofore the case. We saw in Chapter 6 that departments are taking a similar approach with probationers and are developing guidelines for officers to follow that are uniform across all officers’ supervision styles. Figure 9.5 presents the Minnesota Department of Corrections guidelines for the restructure of parole conditions or for parole revocation.

Note that parole officers can restructure the conditions of parole without a formal hearing for any of the parole violations listed as Severity Level I or II, although if there are aggravating factors involved parole may be revoked and the offender incarcerated for the times indicated. Severity Levels III and IV automatically lead to revocation unless there are “multiple and/or significant mitigating factors.” As noted in our discussion of the Vermont probation revocation guidelines in Chapter 6, the impetus to develop these guidelines was financial, but they are also useful correctional tools in that they provide officers with a uniform way of responding to violations, making authoritarian officers less punitive and permissive officers less tolerant of offender misbehavior.

An additional problem facing efforts to reintegrate parolees into their communities is not always knowing what works best, why, and for whom. In examining 32 studies that looked at the process of prisoner reentry, Seiter and Kadela (2003) identified programs that work, that do not work, and that are promising in helping prisoners in the long process of successfully reentering the community. In their research, they looked at transitional community programs such as halfway houses, work release programs, and programs that initiated treatment for inmate deficits (drug dependency, low education, poor life skills, etc.) while offenders were in prison and continued in the community after release. Programs that worked best were concrete programs that provided offenders with skills to compete in the workforce and intensive drug programs. Programs that were located in the community were more effective than prison-based programs. A more recent study (Duwe, 2017) supports this, demonstrating that more “concrete” programs such as job training and housing are more effective than just trying to change attitudes. See Chapter 14 on correctional programming and treatment for more information.

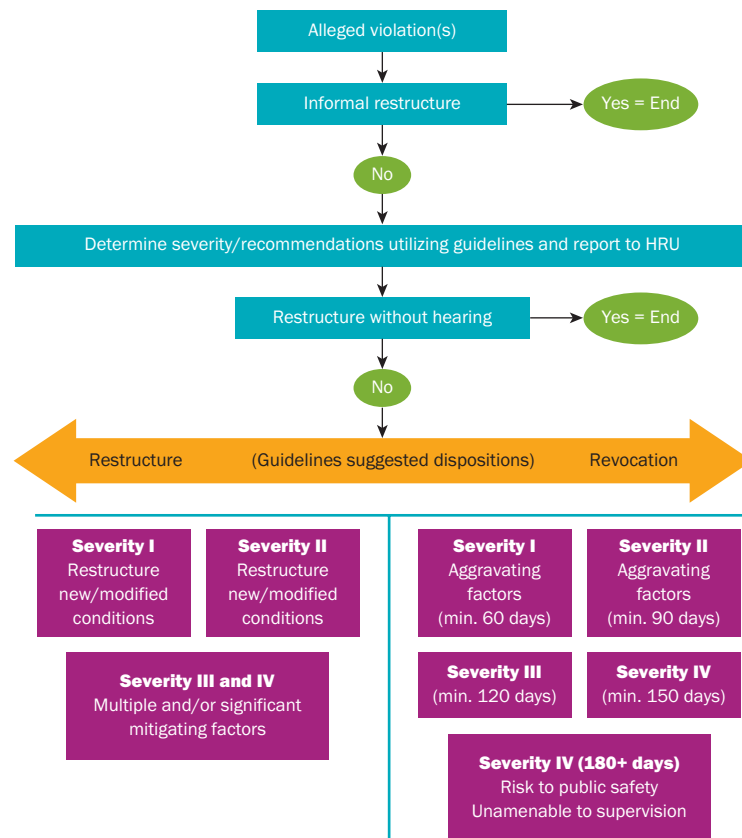
### Halfway Houses

**Halfway houses:** Transitional places of residence for correctional clients who are “halfway” between the constant supervision of prison and the much looser supervision in the community.

As the name implies, **halfway houses** are transitional places of residence for offenders who are, in terms of strictness of supervision, “halfway” between the constant supervision of prison and the much looser supervision in the community. As with probation and parole, early halfway houses were organized and run by private religious and charitable organizations designed to assist released prisoners to make the transition back into free society. The earliest such home was set up in New York City in 1845 by Quaker abolitionist Isaac T. Hopper (Conly, 1998). Also as with probation and parole, federal and state governments

■ **FIGURE 9.5** Minnesota Department of Corrections Guidelines for Restructure or Revocation of Parole

Source: Minnesota Department of Corrections (2009).



| RELEASE CONDITION SEVERITY LEVEL  | PRESUMPTIVE DISPOSITION  |
|---|--|
| <b>Severity Level I</b><br>Restitution payments<br>Unannounced visit/search<br>Leaving state without permission   | Restructure  |
| <b>Severity Level II</b><br>Maintain contact with agent<br>Follow instructions of agent<br>Reside at approved residence<br>Constructive daily activities<br>Contact with law enforcement<br>Use of intoxicants<br>Misdemeanor conviction<br>Subsequent level I violation                  | Restructure  |
| <b>Severity Level III</b><br>Gross misdemeanor conviction<br>Violation of special conditions (non-ISR)<br>Violation of restructured release<br>Subsequent level II violation  | Revoke (120 days)  |
| <b>Severity Level IV</b><br>Violation of special conditions (ISR)<br>Felony conviction<br>Report at residence/agent within 24 hours<br>Offender apprehended out-of-state<br>Assaultive behavior<br>Contact with victims<br>Firearms purchase/possession<br>Subsequent level III violation | Revoke (150 days)<br>Revoke (180 days)<br>— Unamenable to supervision<br>— Risk to public safety |

**Community residential centers:** Places where offenders (usually parolees) reside when correctional authorities deem them not yet ready to live completely freely.

adopted the principles of halfway houses as a good idea. Many states use halfway houses as transition points between prison and full release into the community, and the federal prison system releases about 80% of its inmates into halfway houses (“Director Addresses Changes Within BOP,” 2006).

In addition to being a transition between prison and the community, such places (also referred to as **community residential centers**) may serve as an intermediate sanction for offenders not sent to prison but needing greater supervision than straight probation or parole. The rationale behind halfway houses is that individuals with multiple problems such as substance abuse, lack of education, and poor employment records may have a better chance to positively tackle these problems and to comply with court orders if they are placed in residential centers where they will be strictly monitored while at the same time being provided with support services to address some of the problems that got them there. Halfway houses may be operated by corrections personnel, but they are also likely to be operated by faith-based organizations such as the Salvation Army and Volunteers of America. Nevertheless, residents are still under the control of probation and parole authorities and may be removed and sent to prison if they violate the conditions of their probation or parole.

In times of rising costs and prison overcrowding, cost-conscious legislators tend to view community-based alternatives to prisons like diet-conscious beer drinkers—“prison lite.” Community-based residential programs supposedly provide public safety at a fraction of the cost while allowing offenders to remain in the community and at work earning their own keep. Best of all, they are assumed to reduce recidivism. Halfway houses are also a valuable resource in that they provide offenders released from prison who would otherwise be homeless with an address for employment purposes.

Marion (2002) questioned some of these assumptions and generally painted a disappointing picture for those who believe that keeping offenders out of prison aids in rehabilitation. She saw programs such as halfway houses admitting individuals who would not have gone to prison anyway, meaning that such programs increase rather than decrease correctional budgets. Many residents were “unsuccessfully released” from halfway houses because they used alcohol or drugs while there, and even those successfully released in Marion’s multiyear study, between 10.8% and 50.6% (depending on the year of release), were later imprisoned. However, Lowenkamp and Latessa’s (2002) more comprehensive examination of 38 such facilities in Ohio found that while not all of them were effective, most were. They found that community-based programs were of no use for low-risk offenders (indicating that they didn’t need them in the first place), but the majority of them were effective in substantially reducing recidivism among medium- and high-risk offenders. Another review of the relative success of halfway houses concluded, “Relative to individuals discharged into the community without supportive living environments, those men and women who found residence in halfway houses had better substance abuse, criminal justice, and employment outcomes” (Polcin, 2009, p. 11).

Halfway houses should not be viewed as another way of coddling criminals. The “exchange rate” (i.e., how much time in an alternative sanction an offender is willing to serve to avoid 12 months in prison) for halfway house placement in the previously discussed study by May Wood, Mooney, and Minor (2005) was an average of 12.77 months for offenders who had served time in prison (14.42 months for all offenders). “Experienced” offenders therefore see it as nearly as punitive as prison, despite the relative freedom that halfway residency affords offenders to reintegrate themselves into the community. Much of this has to do with the level of responsibility expected of residents of halfway houses. Living in a halfway house, offenders are expected to take more responsibility for their lives than prison inmates. Halfway house residents are expected to be in programming, expected to be working or looking for work, and subjected to frequent and random testing for drug and alcohol intake. Some halfway houses augment all this with electronic monitoring. None of these expectations is “suffered” by prison inmates (Shilton, 2003).



## House Arrest, Electronic Monitoring, and Global Positioning Systems

**House arrest** is a program used by probation and parole agencies that requires offenders to remain in their homes at all times except for approved periods, such as travel to work or school, and occasionally for other approved destinations. As a system of social control, house arrest is typically used primarily as an initial phase of intensive probation or parole supervision, but it can also be used as an alternative to pretrial detention or a jail sentence. As is the case with so many other criminal justice practices, house arrest was designed primarily to reduce financial costs to the state by reducing institutional confinement.

House arrest did not initially gain widespread acceptance in the criminal justice community, because there was no way of ensuring offender compliance with the order short of having officers constantly monitoring the residence. It was also viewed by the public at large as being soft on crime—“Doing time in the comfort of one’s home.” However, house arrest gained in popularity with the advent of **electronic monitoring (EM)**. EM is a system by which offenders under house arrest can be monitored for compliance using computerized technology. In modern EM systems, an electronic device worn around the offender’s ankle sends a continuous signal to a receiver attached to the offender’s house phone. Modern EM has become more sophisticated with the increased use of cell phones and the demise of landlines, with radio frequencies increasingly being used for monitoring. A home monitoring unit detects the ankle monitor within a specific range and sends confirmation back to the monitoring center if an offender goes beyond the allowed range. If the offender moves beyond 500 feet from their house, the transmitter records it and relays the information to a centralized computer. A probation and parole officer is then dispatched to the offender’s home to investigate whether the offender has absconded or removed or tampered with the device. As of 2004, nearly 13,000 offenders were under house arrest, with 90% of them being electronically monitored (Bohm & Haley, 2007).

An even more sophisticated method of tracking offenders makes use of the **Global Positioning System (GPS)**. Use of the GPS requires an offender to wear a removable tracking unit that constantly communicates with a nonremovable ankle cuff. If communication is lost, the loss is noted by a U.S. Department of Defense satellite that records the time and location of the loss in its database. This information is then forwarded to criminal justice authorities so they can take action to determine why communication was lost. Unlike EM systems, GPS monitoring can be used for surveillance purposes as well as detention purposes. For instance, it can let authorities know if a sex offender goes within a certain distance of a schoolyard or if a violent offender is approaching their victim’s place of residence or work (Black & Smith, 2003). As of 2007, 28 states had legislation calling for some form of electronic monitoring of sex offenders (Payne, DeMichele, & Button, 2008).

Payne and Gainey (2004) indicated that detractors of electronic monitoring tend to criticize it as intruding too much into the realm of privacy and even as barbaric. Of course it is intrusive; that is the point. But it is far less intrusive than prison, and Payne and Gainey stated that offenders released from jails or prisons and placed in EM programs are generally positive about the experience (not that they enjoyed it, but rather that it was better than the jail or prison alternative). Their findings mirror those from a larger sample of offenders on EM programs in New Zealand (Gibbs & King, 2003). Many see it as jail or prison time simply served in a less restrictive and less violent environment (so much for the charge that it is barbaric), although the average experienced offender would exchange 11.35 months on EM for 12 months in prison, and offenders overall would exchange 13.95 months on EM for 12 months in prison (Moore, May, & Wood, 2008). It would seem that from this and similar studies that inveterate offenders tend to prefer prison over virtually any other correctional sentence other than straight probation.

**House arrest:** Program that requires offenders to remain in their homes except for approved periods to travel to work, school, or other approved destinations.

**Electronic monitoring (EM):** A system by which an offender under house arrest can be monitored for compliance using computerized technology such as an electronic device worn around the offender’s ankle.

**Global Positioning System (GPS) monitoring:** A system of probation and parole supervision whereby probationers and parolees are required to wear tracking units that can be monitored by satellites.



**Photo 9.3** An electronic monitoring device, attached to an offender’s ankle, sends a continuous signal to a receiver, which helps ensure compliance without probation and parole officers needing to constantly monitor the offender.





## Comparative Corrections

### CHINESE COMMUNITY CORRECTIONS

Parole does not exist in China in quite the same sense as it exists in the United States. Each year, only a few dozen inmates are released from prison before the termination of their sentences, and then it is mostly for medical reasons. According to Jiang et al. (2014), an average of just under 2% of criminals were paroled between 2008 and 2010, and offenders convicted of murder, rape, robbery, kidnapping, arson, drug dealing, or organized violence, and those sentenced to more than 10 years, are not eligible for parole. In medical parole cases, offenders are considered on probation and can be returned to prison if or when their medical conditions are resolved. For instance, in 1984, a 21-year-old man was sentenced to death for stealing a cap and public brawling, but later he was resented to life. He was medically paroled with a form of tuberculosis and fully recovered. In 2004, the police turned up on his doorstep and took him back into custody to serve the remainder of his sentence, although he never stopped reporting to his probation officer and complied with the conditions of his parole ("The Case for Freeing the Last Hooligan," 2011).

China's official criminal justice policy is "Integration of Leniency and Rigidity" (Liu, Zhao, Xiong, & Gong, 2012). China's promiscuous use of the death penalty and its treatment of the young man above point to rigidity, but where is the leniency? From the Chinese point of view, leniency resides in probation and public surveillance. Probation is granted only to first-time minor offenders, and relative to incarceration it is lenient. The Chinese Criminal Code states that "probation may be granted to a criminal sentenced to criminal detention or to fixed-term imprisonment of not more than three years if, according to the circumstances of his crime and his demonstration of repentance, imposing probation will not result in further harm to society" (quoted in Tursun, 2010, p. 288). Probation is typically granted for juvenile delinquency, dereliction of duty, and crimes of negligence; it cannot be applied to recidivists for any crime and is granted in only about 15% of criminal cases (Liu et al., 2012). Chinese probation is viewed by many observers

as the application of reintegrative shaming theory, whereby deviant acts are condemned (shaming) while leaving the door open to reacceptance into society on payment of one's debt to it (Deng, Zhang, & Cordilia, 1998).

Probation is not a formal legal sanction as it is in the United States and other Western countries; it is more an informal means of social control, although the offender is placed under the supervision of a probation officer (Tursun, 2010). Because of China's Confucian heritage, there has been a long tradition of informal social control via sanctioning mechanisms available to people's mediation committees that are organized in work and neighborhood groups (Walsh & Hemmens, 2014). Every adult in China belongs to one or more of these groups, and thus strong pressures toward conformity exist everywhere. Criminal behavior on the part of anyone in the community is seen as a bad reflection on the whole community and is intolerable to mediation committees.

Public surveillance is a sanction similar to probation but further requires that offenders be deprived of the freedom of speech, assembly, association, and demonstration "without the approval of the organ executing public surveillance" (Tursun, 2010, p. 290). Shaw (2010) described such an organ of surveillance with regard to parolees: "In local communities, individual administration of justice stations work with street, village, and other satellite government offices, keeping an inescapable net of surveillance, education, assistance, discipline, and control over former inmates" (p. 65). If a person under an order of public surveillance is deemed to be acting in a manner inconsistent with socialist principles, they are reported to the police and may then likely be imprisoned. The level of supervision and assistance afforded Chinese parolees is in stark contrast to the minimal supervision and assistance provided by U.S. parole services as well as by correctional services in other Western nations. This needs to be viewed in light of Western individualism and its concomitant concerns for privacy and individual rights.

Researchers are positive about the alleged rehabilitative promise of allowing offenders to serve time at home and thus maintaining their links to family. A large study comparing 5,000 medium- and high-risk offenders on EM compared with 266,000 not on EM found a 31% decline in the risk of failure among EM offenders (National Institute of Justice,

2011). On the downside, although successful completion rates for EM programs are high, recidivism rates *after release from EM* were not any better than those of probationers and parolees not on EM programs matched for offender risk in several Canadian provinces (Bonta, Wallace-Capretta, & Rooney, 2000). This may be viewed positively, however, as a function of the greater ability to detect noncompliance with release conditions among those under EM supervision.

An additional problem with EM is that because its low cost relative to incarceration is alluring to politicians, it may be (and is) used without sufficient care being taken as to who should be eligible for it. While offenders can be monitored and more readily arrested if they commit a crime while on EM, EM does not prevent them from committing further crimes. Several high-profile crimes, including rapes and murders, have been committed by offenders who succeeded in removing their electronic bracelets (Reid, 2006). When cases such as these are reported, the public (which by and large would rather see iron balls and chains attached to offenders rather than plastic bracelets) responds with charges of leniency. This is unfortunate because EM does appear to have a significant impact on prison overcrowding and on reducing correctional costs. Of course, EM can be considered to reduce correctional costs only if it is used as a substitute for incarceration, not as an addition to normal probation and parole, in which case it is an added cost.

Several European nations have turned to EM to ease the burden of overcrowded prisons over the past two decades. The successful completion rates are fairly consistent across countries, and they are refreshingly high. This is possibly a function of the lower risk offenders who are typically placed on EM in Europe. It is generally required that for an offender to be placed on EM, they must have a suitable residence, have a functional phone line, and be working (Havercamp, Mayer, & Levy, 2004). There is also a wide range of times to be served on EM, ranging from about 3 months in England and Wales for probationers to 13 to 23 months for parolees in France (Wennerberg & Pinto, 2009). One large-scale study conducted in Britain of parolees released under home detention curfew using electronic monitoring to enforce it provided very positive results (Dodgson et al., 2001). Six months after release, only 9.3% (118 of 1,269) of the EM parolees were reconvicted of new crimes, compared with 40.4% (558 of 1,381) of the prisoners who were unconditionally released. Of course, all of this difference cannot be attributed to the EM program given that the groups were not matched for criminal history and those on the program were already considered to have a lower risk of reoffending. Nevertheless, the EM group was positive about the program (it got them early release from prison), and the net financial saving to the prison service over 12 months was estimated to be £36.7 million (about \$60.9 million). The consensus in the European literature reviewed seems to be that electronic monitoring “works” and that it is here to stay.

## Concluding Remarks on Reentry and Recidivism

We have learned that reentry into the community, whether on supervised parole or not, is an extremely difficult process. Everything appears to be working against offenders’ successful reintegration, not the least of these factors being the offenders themselves. Many criminals are committed to their lifestyles and simply cannot, or will not, lead law-abiding lives. Numerous lines of evidence show that work and other normal responsibilities that go with the straight life do not mesh well with their “every night is Saturday night” lifestyles (Jacobs & Wright, 1999; Mawby, 2001; Rengert & Wasilchick, 2001). Nevertheless, correctional work is premised on the assumption that people can change, and not all criminals by any means are totally resistant to change. Although many offenders seem hell-bent on thwarting the best efforts of all to turn their lives around, many others can be reformed. When we find the best reentry programs (programs that have repeatedly been shown empirically to significantly reduce recidivism) and implement them, what kind of success can we expect?

Joan Petersilia (2004), the preeminent reentry researcher today, summed up the combined Canadian and American reentry “what works” literature and stated,

They took place mostly in the community (as opposed to institutional settings), were intensive (at least six months long), focused on high risk individuals (with risk level determined by classification instruments rather than clinical judgments), used cognitive-behavioral treatment techniques, and matched therapist and program to the specific learning styles and characteristics of individual offenders. As the individual changed his or her thinking patterns, he or she would be provided with vocational training and other job-enhancing opportunities. Positive reinforcers would outweigh negative reinforcers in all program components. Every program begun in jail or prison would have an intensive and mandatory aftercare component. (pp. 7–8)

Petersilia (2004) went on to suggest that if we could design programs that combined all these things, we might be able to reduce recidivism by about 30%. So with all the best methods currently available, caring and knowledgeable counselors, legislators willing to provide budgets sufficient to meet the needs of all the identified programs, the best we can hope for is a 30% reduction in recidivism. Even this 30% figure is a “best guess” premised on Petersilia’s faith in the efficacy of rehabilitative programs. As much as we would all love to find a way to turn offenders into respectable citizens, Petersilia’s estimate reminds us that humans are not lumps of clay to be molded to someone else’s specifications. Although correctional workers might regret that they cannot mold their charges’ minds as they might wish to, the fact that they cannot do so without their owners’ consent is a vindication of human freedom and dignity.

## Legal Issues in Parole

### LO 9.6 State the legal challenges faced related to parole.

The prisoners’ rights period also extended rights to offenders under community supervision. Probation and parole are statutory privileges granted by the state in lieu of imprisonment (in the first case) or further imprisonment (in the second case). Because of their conditional privilege status, it was long thought that the state did not need to provide probationers and parolees with any procedural due process rights in the granting or revoking of either status. Today probationers and parolees are granted some due process rights, although as with inmates, there are restrictions on them that are not applicable to citizens not under correctional supervision.

The first important case in this area was *Mempa v. Rhay* (1967). Jerry Douglas Mempa was a probationer who committed a burglary, to which he admitted, 4 months after he was placed on probation. His probation was revoked without a proper hearing or the assistance of legal counsel; he was sent to prison. The issue before the Supreme Court was whether probationers have a right to counsel at a deferred sentencing (probation revocation) hearing. The Court ruled that under the Sixth and Fourteenth Amendments, they do because Mempa was being sentenced, and the fact that sentencing took place subsequent to a probation placement does not alter the fact that sentencing is a “critical stage” in a criminal case. The Court further stated that probationers facing revocation should have the opportunity to challenge evidence by cross-examining state witnesses (typically only the probation officer), present exculpatory witnesses, and testify themselves.

A further advance in granting due process rights to offenders on conditional liberty status came in *Morrissey v. Brewer* (1972). John Morrissey was a parolee who was arrested by his parole officer for a number of technical violations and returned to prison without a hearing. Morrissey’s petition to the Supreme Court claimed that because he received no hearing

prior to revocation, he was denied his rights under the due process clause of the Fourteenth Amendment. The Court agreed that when a **liberty interest** is involved, certain processes are necessary (a liberty interest refers to government-imposed changes in someone's legal status that interfere with the person's constitutionally guaranteed rights to be free of such interference). The ruling by the Court in *Morrissey* noted that parole revocation does not call for all the rights due to a defendant who is not yet convicted but that there were certain protections under the Fourteenth Amendment to which the defendant is entitled. These rights were laid out by the Court as follows:

**Liberty interest:** An interest in freedom from governmental deprivation of liberty without due process.

- a. Written notice of the claimed violations of parole
- b. Disclosure to the parolee of evidence against him
- c. Opportunity to be heard in person and to present witnesses and documentary evidence
- d. The right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation)
- e. A "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers
- f. A written statement by the fact finders as to the evidence relied on and reasons for revoking parole

While individuals are on probation or parole, they have limited constitutional rights, and their probation and parole officers have broader powers to intrude into their lives than do police officers. Because probationers and parolees waive their Fourth Amendment search and seizure rights, probation and parole officers may conduct searches at any time without a warrant and without the probable cause needed by police officers. Evidence seized by probation and parole officers without a warrant can be used in probation or parole revocation hearings, but not as trial evidence in a new case (*Pennsylvania Board of Probation and Parole v. Scott*, 1998). The Supreme Court ruled that to exclude evidence from a parole hearing would hamper the state's ability to ensure the parolee's compliance with conditions of release and would yield the parolee free of consequences for noncompliance. This "special needs" (of law enforcement) exception to the Fourth Amendment has been extended to the police under certain circumstances. The Court has held that if a probation order is written in such a way that provides for submission to a search "by a probation officer or any other law enforcement officer," then the police gain the same rights to conduct searches based on less than probable cause as do probation and parole officers (*United States v. Knights*, 2001).

## Ethical Issue

### WHAT WOULD YOU DO?

You are a parole agent. Vice squad police officers with whom you have enjoyed a good relationship in the past have approached you to enlist your aid in setting up a parolee they badly want off the streets. Because you have more leeway than the police to enter the parolee's home and conduct searches, they want you to conduct an early morning raid on his house. They tell you that even

if you don't find drugs, you should plant drugs they will provide for you. You know this parolee has been a major dealer in the past and that he has used violent tactics to protect his territory. Although he hasn't given you any real trouble on parole so far, you agree that this man should not be on the streets. Discuss your options and what you believe you would end up doing.

## SUMMARY

### LO9.1 State the history and purpose of parole.

- Parole is the legal status of a person who has been released from prison prior to completing their full term. The concept can be traced to the 19th century with Alexander Maconochie's ticket-of-leave system in Australia and Walter Crofton's Irish system. Parts of these systems were brought to the United States during the 1870s by Zebulon Brockway, superintendent of the Elmira Reformatory in New York. Brockway's system required indeterminate sentencing so that "good time" earned through good conduct and labor could be used to reduce inmates' sentences.

### LO9.2 Identify the difference between mandatory and discretionary parole and how they both differ from unconditional release.

- In the modern United States, we have two systems of parole: discretionary and mandatory. Discretionary parole is parole granted by a parole board on the basis of its members' perceptions of the inmate's readiness to be released; mandatory parole is based simply on a mathematical formula of time served. Discretionary parolees are significantly more likely to successfully complete parole than are mandatory parolees. Unconditional release is a type of release from prison for inmates who have completed their entire sentences. They are released unconditionally—with no parole.

### LO9.3 Describe the roles and duties of the parole board and parole board members.

- A parole board is a panel of people presumably qualified to make judgments about the suitability of a prisoner to be released from prison after having served some specified time of their sentence. In states with discretionary parole systems, a parole board is required. Board members are appointed. Board members assess a variety of information about the inmate and interview them at a parole hearing to discuss the assessed information and to gain some face-to-face insight about the inmate.

### LO9.4 Explain the issues involved in successful prisoner reentry into the community.

- The reentry of prisoners into the community is a very difficult process. The ex-con stigma makes getting

employment problematic, and the period of absence makes it tough to reestablish relationships. Successful reentry depends on several factors, not the least of which are the policies of the parole authorities, as the huge gap between the Massachusetts and Utah "success" rates indicates. Nevertheless, providing parolees with concrete help such as job skills and drug rehabilitation programs can go a long way in helping them remain crime free. This effort may be particularly fruitful if it is made in some form of community-based residential program.

### LO9.5 Compare and contrast halfway houses, house arrest, electronic monitoring, and global positioning devices.

- Halfway houses are transitional places of residence for correctional clients who are "halfway" between the constant supervision of prison and the much looser supervision in the community. These locations may also be called community residential centers. These services allow some supervision coupled with access to services to help bridge that gap back into the community. House arrest is a program used by probation and parole agencies that requires offenders to remain in their homes at all times except for approved periods, such as travel to work or school, and occasionally for other approved destinations. EM and GPS technology is increasingly used in corrections to assist with such monitoring. While it helps by increasing the level of offender monitoring and apprehension, it cannot altogether prevent additional crimes while on the program, which is why candidates for this type of supervision must be chosen carefully. In sum, few programs can be said to work for most offenders if we define "work" unrealistically. Human nature is complicated, often ornery, and resistant to change. Even "ideal" programs such as those defined by Petersilia (2004) could be expected (according to her) to reduce recidivism by only about 30%.

### LO9.6 State the legal challenges faced related to parole.

- Today parolees are granted some due process rights while within their probationary programs. They have the right to a hearing and counsel as well as the right to challenge evidence and present witness testimony. Their search and seizure rights are waived during their parole period.



## KEY TERMS

|                                    |     |                  |     |                       |     |
|------------------------------------|-----|------------------|-----|-----------------------|-----|
| Community residential centers      | 234 | Halfway houses   | 232 | Parole                | 218 |
| Discretionary parole               | 221 | House arrest     | 235 | Parole board          | 226 |
| Electronic monitoring (EM)         | 235 | Irish system     | 219 | Unconditional release | 220 |
| Global Positioning<br>System (GPS) | 235 | Liberty interest | 239 |                       |     |
|                                    |     | Mandatory parole | 221 |                       |     |

## DISCUSSION QUESTIONS

1. Compare the recidivism rates claimed for the ticket-of-leave parolees with those of modern American parolees. What do you think may account for the huge differences?
2. Explore and discuss why it is that we still continue to use mandatory parole in the face of evidence that discretionary parole is a safer bet.
3. What do you think may be the single most difficult problem to overcome by a parolee who has just been released after serving 5 years in staying out of trouble?
4. Would it be a good thing to have a number of community-based residential facilities located in high-crime communities so that some of the problems noted by Clear et al. (2001) might be avoided?
5. Given that expert opinion says a 30% reduction in the recidivism rate is about the best we could accomplish if all treatment conditions were optimal, do you think that trying to rehabilitate criminals is a waste of time and that the money would be better spent on keeping them locked up?



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# 10 Women and Corrections

## TEST YOUR KNOWLEDGE

Test your current knowledge about women working in corrections and those under correctional supervision by answering the following questions as true or false. Check your answers on page 388 after reading the chapter.

1. The number of men and boys under correctional supervision almost always has exceeded the number of women and girls.
2. In early prisons, the correctional experience for women did not significantly differ from that of men.
3. Race shaped the incarceration of men and women in southern and northeastern prisons before and after the Civil War.
4. Female matrons were first hired, in part, to protect female inmates from sexual assault in prisons.
5. Street crimes are usually committed by women and girls and less commonly by men and boys.
6. Women are often considered double deviants.
7. Feminists have played an important role in improving corrections for women and girls.
8. A liberal feminist is someone who believes that women and girls should have the same jobs and educational opportunities as men and boys.
9. Male inmates' right to privacy has triumphed against women's equal employment rights in the courts.

## LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 10.1** State the history of women in corrections.
- 10.2** Describe the current state of women in the correctional system for both those incarcerated and those employed in it.
- 10.3** Explain the special challenges faced by women and girls in corrections.
- 10.4** Discuss the challenges that female staff have overcome in corrections and how they did so.

## SUPERVISING IS DIFFERENT FOR WOMEN

### Mary K. Stohr

This is a story I often tell my students because it was an instance when merely my gender made such a difference in others' aggressive behavior in the correctional environment. The scene is a male prison control room. The sergeant is a very capable man who believes in the power of talking, as in "talking inmates down" from anger and aggression rather than the use of brute force. An inmate has been called to the office for the purpose of throwing him in segregation for suspicion that he has been "bulldogging"; I reported him for taking other inmates' desserts at dinner (actually the other inmates gave him their desserts when he came up to stand by their tables). The sergeant admits him to the control room, with two other male officers present in case there is trouble. And there is trouble. This inmate, we'll call him Casey, is huge—as large as a door with muscles bulging in his arms. Despite his size, he is not known to be the smartest of men and is prone to anger. The sergeant is wielding all his verbal skills to reason with Casey, to no avail, and Casey refuses to enter segregation willingly. Once Casey's fists are balling against his sides and he backs away from the sergeant and up against a wall, the sergeant begins calling in reinforcements.

(Continued)

(Continued)

A male counselor and I are in the back room watching this through a glass window (the sergeant wanted me out of the way in case the inmate directed his anger at me, as I was the one who reported him). We know the prison is understaffed, however, and when we can see things are getting out of hand, I move into the control room and face Casey. I don't say a word, but my plan is to grab and hold one of his limbs as we jointly wrestle him into segregation. But this plan doesn't become necessary as Casey takes one look at me, unclenches his fists, and puts his hands out in front of him for the handcuffs. He goes peacefully to segregation. I am stunned, the sergeant is stunned, and the male correctional officers are staring at me as if I had some magic mojo, when all I had was the fact that I am female. I don't know why, but Casey didn't want to fight with or in front of a woman, and for that I was very grateful!

## Introduction: Women and Corrections

### LO 10.1 State the history of women in corrections.

As far back as anyone can remember, there have been fewer women and girls incarcerated or under correctional supervision than there have been men or boys. Of course, there have been exceptions for some particular crimes (e.g., prostitution for women and girls or status offending for girls), but correctional populations have always included more male inmates. Although the percentage of women and girls in those populations has increased in recent years, it is still true that the vast majority of those under correctional supervision in the United States are male.

What this numerical “minority” status for girls and women has meant is that institutions and programming have been, and still are, typically geared toward boys and men. As discussed in Chapter 2, the first prisons were built for men, although sometimes sections of them were set aside for women. The U.S. history of institution building illustrates this fact. What Young (1994) found from her research on the construction of juvenile facilities in the southern United States following the Civil War was that males, particularly white males, were much more likely to have juvenile prisons constructed specifically for them than were females. Women and girls accused (and thus placed in jails) or sentenced (and thus placed in jails or prisons, depending on whether they were accused or sentenced and if the latter for how long) were much more likely to do their time in male facilities. Initially those facilities were bridewells or poorhouses, but later they were separate sections of jails and prisons or completely distinct facilities and houses of refuge (Baunach, 1992; Belknap, 2001; Chesney-Lind & Shelden, 1998; Kerle, 2003; Pollock, 2002b, 2014; Rafter, 1985).

Part of what shaped the treatment of women and girls in the past was the numerical fact that they accounted for fewer offenders and inmates than men and boys. As those numbers have increased, however, and as feminist beliefs regarding the value of women and girls have changed attitudes, concerns about how girls and women are treated as clients and what their needs are have reshaped correctional practice. This is also true with regard to female staff and their rights. We will begin with a brief history of the female correctional experience.

## The History of Women in Prisons

As mentioned in Chapter 2, the first American correctional facility—though it is not generally acknowledged as the first American prison—to hold felons only was the New York Newgate Prison in Greenwich Village, New York City. Opened in 1797, it had a separate wing for female inmates where they were housed in a group setting. As Rafter (2009) noted, although they had no matron, putting the women together helped provide protection from



“lascivious turnkeys” or guards (p. 51). All indications are that the women at Newgate washed and sewed for the prison (while the male inmates were engaged in production of goods for sale) and were situated close to other inmates.

When Newgate Prison closed and the inmates were scheduled for transfer to the congregate but silent and strict-discipline prisons of Auburn and Sing Sing, neither prison wanted to take the women, stating that they were difficult to manage (Rafter, 2009). While the matter was debated, the female inmates from New York City were held at the city’s Bellevue Penitentiary, where the conditions in terms of food, housing, supervision, and classification were poor. Moreover, the silent requirement so popular at the men’s prisons could not be enforced because of the congregate housing and the lack of a female matron. When a cholera epidemic hit the prison, 8 women died and 11 escaped (Rafter, 2009).

The New York women outside of New York City were sent to the new Auburn Prison in 1825 (Rafter, 2009). However, their treatment there was also subpar, as they were housed in a cramped, unventilated attic above the kitchen without a matron until one was hired in 1832. Because of the congregate nature of their living and working conditions (they were engaged in sewing), it was once again difficult to enforce the silence requirement.

After the lash was used to discipline an inmate who was 5 months pregnant (she had gotten pregnant while in prison) and the inmate later died, the state constructed a separate prison at Mount Pleasant for the women in 1839; this was the first women’s prison in the United States (Rafter, 2009). Though it was close to the Sing Sing Prison and was in part administered by it, the **Mount Pleasant Prison** had its own buildings, staff, and administrator. This prison was built behind Sing Sing and overlooked the Hudson River. It was an Auburn-like building with Auburn- and Sing Sing–like sensibilities. It had a room for lectures and a chapel and a nursery. The matron’s quarters were also in the prison.

Ohio’s development of prison facilities for women was similar to New York’s (Rafter, 2009). At first women there were held in less secure facilities along with the men. Then, in 1834, Ohio built an Auburn-like prison called the Ohio Penitentiary, and in 1837 the state began housing the women in separate quarters from the men. However, the standards for prison operation in Ohio were even worse than in New York, and disease and corruption were rampant. The annex specifically for the women became crowded and fell into serious disrepair. The women had no matron and thus discipline was nonexistent; moreover, they were subject to sexual attacks by male staff.

Among Tennessee prisons, the first of which opened in Nashville in 1831, there was a progressive attitude toward standards and care, more like the New York model (Rafter, 2009). Women, however, were imprisoned in such small numbers before the Civil War that they were housed with the men and worked with them in mines and on railroads. There were no matrons to protect them, and there were no separate accommodations for women in Tennessee prisons until the 1880s. At this time, they were placed in small, overcrowded quarters in the Nashville Prison, with no room for work or exercise.

### Race in Early Prisons

Maryland opened its first prison, the Maryland State Penitentiary, in 1811 in Baltimore (Young, 2001). It housed

**Mount Pleasant Prison:** First prison constructed for women in the United States. Built in 1839 close to the Sing Sing (New York) prison for men, it was in part administered by Sing Sing but had its own buildings, staff, and administrator.



Trinity Mirror/Mirrorpix/Alamy Stock Photo

**Photo 10.1** A prison officer examines the knitting of an inmate.



the women in a congregate fashion in the same prison with the men until 1921, although the genders were separated. At first the races were not separated, but by the 1830s, Black men and white men were separated at the prison, and later so were the women. As Maryland was a border state—separating the slaveholding South from the free North before the Civil War—administrators of its penitentiary wrestled with issues of slavery and free and enslaved Black people. The research on incarcerated Black women indicates that they were disproportionately incarcerated in the Northeast and Midwest before the Civil War, but few Black people, either male or female, were incarcerated in the South before the war. After the war, however, Black men and women were also disproportionately incarcerated in all prisons, but particularly in southern prisons, where slavery-like treatment and work requirements were imposed (Oshinsky, 1996; Rafter, 2009; Young, 2001).

In her study of the Maryland State Penitentiary between the years of 1812 and 1869, Young (2001) found that 72% of the incarcerated women were Black and that as the Civil War drew to a close, the proportion of Black women only increased. This was also true regarding the incarceration of Black women around the time of the Civil War, especially during the antebellum stage, in Texas, Kansas, and Missouri. It is possible that a Maryland law passed in 1858 that made Black women who committed larceny subject to “sale” rather than prison resulted in less incarceration of Black women before the Civil War in that state (Young, 2001).

Both Black and white women in the United States in the 19th century tended to be incarcerated for property crimes, particularly larceny (Rafter, 2009; Young, 2001). Very few women were incarcerated for violent crimes—only about 3% to 4% (Young, 2001). White women did tend to be incarcerated for “offenses against morality” more than Black women, perhaps because they were more “visible” to the police in white areas of town or the police were more attentive to them (Young, 2001). But there were also convictions for other felonies, miscellaneous offenses, and vagrancy. Young (2001) also found that Black female inmates were required to serve a greater proportion of their sentences than were white female inmates, and they tended to be pardoned less and die while incarcerated more often than white female inmates.

## Discipline in Women’s Prisons

As with the male prisons during the 1800s, methods of discipline moved from the severe to the soft, depending on the availability of supervision, the facilities, the number of women incarcerated, and the inclinations of the keepers. Rafter (2009) reported that rarely was the lash used at the Mount Pleasant Prison for women, but the gag was used all of the time. At the Ohio prison, for instance, by the 1870s the discipline of women was quite severe, and women were beaten or placed in solitary confinement to enforce it (Rafter, 2009). By 1880, the “hummingbird” punishment was used in Ohio; this “forced the naked offender to sit, blind-folded, in a tub of water while steam pipes were made to shriek and electric current was applied to the body” (Rafter, 2009, p. 53).

## Hiring of Female Matrons

A serious problem for many of the first prisons was the absence of female matrons to supervise and in some cases protect the women. Writing in 1845 (reprinted in 1967) after visiting several primarily male facilities that housed women, the reformer Dorothea Dix noted that matrons had been hired in several prisons where women were housed (e.g., Connecticut Prison, Sing Sing, Eastern State Penitentiary, Maryland Prison) but not in many county jails or other prisons.

## Houses of Refuge for Girls and Boys

Developed in tandem with the adult prisons were juvenile facilities in larger states for delinquent, neglected, abandoned, and abused children. **Houses of refuge** were part of the Jacksonian movement (named after President Andrew Jackson) of the early 1800s to use institutions as the solution for social problems. The first was opened in New York in 1825, the second in Boston in 1826, and the third in Philadelphia in 1828 (Beaumont & Tocqueville, 1833/1964, p. 136). Their stated purpose was to remove impressionable youth, mainly boys but also girls, from the contamination that association with more hardened adult prisoners might bring. As Harris (1973) commented, such facilities for younger inmates had existed in Europe, particularly Holland, since the 17th century. The difference she noted between the American experiment with houses of refuge and the Dutch experiment was that the Dutch houses were used only for the delinquent and those thought likely to become so without intervention, and they were devised to achieve reform among their inmates.

From the first, the American house of refuge was a private institution. Such institutions were developed through private charity and subscription and were operated by people hired by private subscribers. The states sanctioned their development this way and paid “some pecuniary assistance” to them, but they had no part in their administration (Beaumont & Tocqueville, 1833/1964, p. 137).

The early American houses of refuge were to be a mix of prison and school. The keepers in such houses were guardians, and such guardianship continued until a child reached the age of 20. In some of the houses, the children were separated at night and worked or went to school together during the day. In others, they were in congregate situations both at night and during the day. The requirement of silence imposed on adult institutions of the time was not visited on the children, as it was thought to be impossible to keep them completely quiet. In the New York and Philadelphia houses, the children worked in a shop making shoes or cloth and as carpenters for 8 hours a day and spent another 4 hours in school. In the Boston house, they spent only 5.5 hours in the workshop, 4 hours in school, and 1 hour in religious study, and there were a few hours for play (Beaumont & Tocqueville, 1833/1964, p. 142). The workshops in the houses were operated by private contractors. Notably, the girls did all of the domestic work around the houses, including the cleaning, cooking, and sewing of clothes for themselves and the boys. The discipline used in the houses varied from deprivation of recreation, to solitary confinement, to restrictions on food and water, and sometimes the use of corporal punishment or the use of stripes (lashes with a leather belt).

Because the children placed in houses of refuge were not always sent there for punishment, it was thought that their time should be indeterminate, as a magistrate could not tell at the beginning how long it would take to reform or correct a child. It was left to those who operated the institutions to decide when a child was ready to leave. Moreover, if a child did not do as well as was hoped when released and was still younger than 20, the staff at the institution were still their guardians and had the right to call the child back. Beaumont and Tocqueville (1833/1964) acknowledged that these absolute rights to deprive liberty might lead to abuse, but they pointed out that judges and parents did have some rights to oversee and protest the incarceration of these children in the courts.

In a recidivism study of the New York House of Refuge conducted by Beaumont and Tocqueville (1833/1964) in 1831, the authors found that of more than 500 children released, more than 200 had been “saved from infallible ruin” (p. 151). As to the other 313 children released, the authors found that their behavior since release was either doubtful, “bad,” or “very bad” (p. 151). Of course, lacking a control group for these releasees, it is difficult to know how to interpret these findings, but it was an admirable attempt by these French observers to try to find evidence as to the effectiveness of such early houses of refuge.

**Houses of refuge:** Part of the Jacksonian movement (named after President Andrew Jackson) of the early 1800s to use institutions as the solution for social problems. Their stated purpose was to remove impressionable youth, mainly boys but also girls, from the contamination that association with more hardened adult prisoners might bring.

Dorothea Dix (1845/1967), whose own research is described more fully in earlier chapters, also visited houses of refuge in Boston, New York, Philadelphia, and Baltimore, as well as a farm school for children on Long Island. Her impression of these facilities, 14 years after Beaumont and Tocqueville visited some of them, was generally favorable. She liked that the children were employed in useful work, that the facilities were clean, and that the children were generally in good health. She noted that many houses of refuge provided schooling, training, and apprenticeships that would allow the children to succeed once they were able to leave. Some of the reports from the facilities she reviewed indicated that children as young as 6 were incarcerated in these houses and a possible offense that led to placement was being “stubborn” or “idle,” along with other more common but usually minor criminal offending (Dix, 1845/1967, p. 91). Boys were often apprenticed to farmers and girls to domestic work once they reached their age of majority and so were able to leave the institution.

### Growth in Numbers of Women and Girls

As mentioned in the foregoing, the number of incarcerated and supervised women under the correctional umbrella has rarely been larger, but this was not always so. In the past, the number of female inmates and supervisees was proportionately smaller. For instance, we know from U.S. Census Bureau reports that women constituted 3% or 4% of state and federal prison populations from 1910 through the 1970s (Cahalan, 1986, p. 65). In 1980, that number had risen to 5% and has only increased since. If you add in reformatories, women and girls accounted for, on average, about 5% of those incarcerated in correctional facilities from 1910 through 1959 (p. 66). Anywhere from 5% to 9% of jail inmates were female from 1910 to 1983 (p. 91). Juvenile institutions averaged about 21.2% female residents (aged 15–19) from 1880 to 1980 (p. 130). Unfortunately, a gender breakdown of parolees and probationers is not available, but given the overall increase in the percentage of incarcerated women generally and women and girls on probation or parole currently, it is likely that historically they were not as subject to the criminal justice system as they are today either.

The best explanation for the historically small number of female offenders in the U.S. criminal justice system (compared with men and boys) has been the fact that they commit fewer street crimes that would garner this distinction. Most murders, robberies, rapes, burglaries, and even larcenies are committed by men and boys (Federal Bureau of Investigation, 2018). Even among corporate or white-collar and environmental crimes, the more likely offender is male, if for no other reason than the fact that more men are in a position to commit such crimes than women. As mentioned in other sections, the drug war of the past 40 years has brought more female offenders into the system, which has resulted in their greater proportional growth among correctional populations, but even with this sort of offense they are in the clear minority.

### Current Figures on the Number of Women and Girls in Corrections

**LO 10.2** Describe the current state of women in the correctional system for both those incarcerated and those employed in it.

Meeting the needs of both women who are incarcerated and women who are working in the correctional system today is the focus of this section.

## Female Correctional Clients

By any measure, however, the number of women and girls as inmates or supervisees in corrections has grown exponentially over the past 3 decades, with some notable declines in some populations more recently. In 2000, women made up 11.4% of jail populations, but by 2018, that figure was almost 16% (Zeng, 2019, p. 6; Zeng, 2020, p. 6). In 2000, women made up 6.4% of prison populations, and by 2018, that figure was at almost 8% (Bronson & Carson, 2019, p. 3; Carson, 2020, p. 3). In the past decade, as male incarceration in jails and prisons has decreased markedly, female incarceration has risen in both (though there have been some decreases in the number of women in prisons since 2016). Girls confined in residential facilities increased from 13.6% of all juveniles in 1997 to 15.1% in 2003, and by 2015, their numbers had stabilized at 15% of that population, with a greater percentage of them held for status offenses and in private facilities than boys (Carson & Anderson, 2016; Hockenberry, 2018, p. 11).

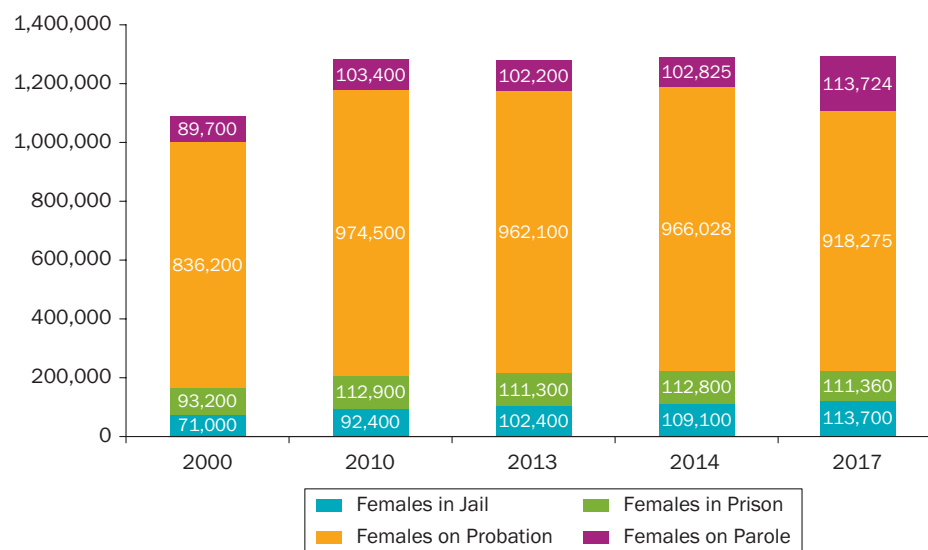
Perhaps the largest growth in the number of women or girls, as far as correctional populations are concerned, has come in probation. Women constituted 22% of probation and 12% of parole caseloads in 2000, and by 2016 those percentages had increased to 25% of probation and 13% of parole (Kaeble, 2018, pp. 17, 24; Kaeble & Bonczar, 2017). Although some of these percentage increases seem small, in the case of probation they represent thousands of women, as total caseloads in 2016 included 3.6 million people (Kaeble, 2018, p. 1). For girls on probation, the increases in the last two decades of the 20th century and the first decade of the 21st century do not even seem small. In 1985, girls constituted 19.3% of juveniles on probation, and by 2004 that percentage had grown to 27.2% and remained at 27% by 2009 (Livsey, 2012, p. 2; Puzzanchera & Kang, 2007). However, along with boys, the number of girls on probation has been in decline, especially from 2008 to 2015 (Hockenberry & Puzzanchera, 2018). Explanations for these increases and decreases in women or girls' presence in correctional populations are likely multifaceted. Incarceration and community supervision generally reached a peak in this country in 2007 and 2008 and has been in decline since for any number of reasons related to age, cost concerns (particularly as related to the recession), less of an appetite for harsh punishments, legalization and medicalization of marijuana, and so on (see Garland et al. 2014, and Chapter 13 of this book for a discussion of decarceration). Therefore, as with men, we can expect that the incarceration of women would decrease (though it hasn't so much for adult women). But explaining the increases in female incarceration, when they do not track with the decreases in male populations, is perhaps more difficult and a subject in need of research. As indicated by the data contained in Figure 10.1, the overall number of women under correctional control remained steady from 2010 to 2017, though this masks the fact that there have been decreases in their probation and prison numbers and increases in their representation in jails and on parole. Despite this increase, the majority of inmates for all correctional populations are still largely male, as shown in Figure 10.2.

## Female Staff

The employment of female correctional officers has not increased as steeply or steadily as has the number of women and girls under correctional supervision. As already mentioned, women were employed to a limited degree as matrons to work with female inmates in some of the earliest prisons and jails (Pollock, 2002b; Stohr, 2006; Zupan, 1992). However, they did not make significant inroads into the correctional profession until the Civil Rights Act of 1964 was amended in 1972, and women began using that law to sue in courts to gain employment in both female and male correctional institutions. According to the Bureau

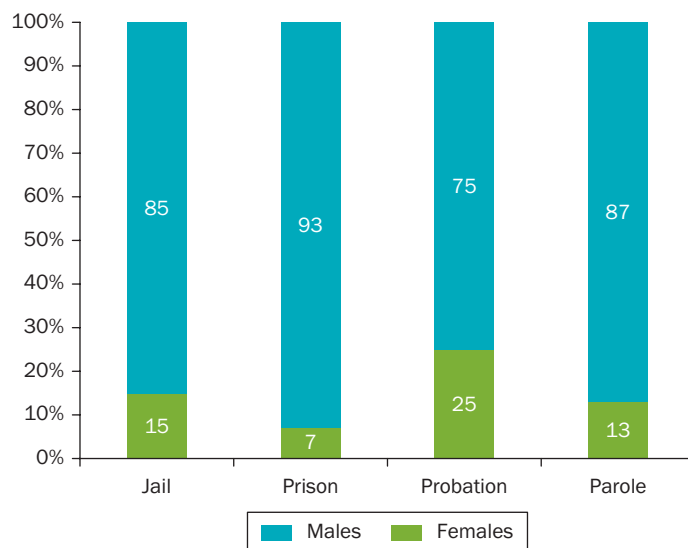
■ **FIGURE 10.1** Growth of Female Correctional Population

Source: Bureau of Justice Statistics.



■ **FIGURE 10.2** Percentage of Male Versus Female Inmates, 2017

Source: Bureau of Justice Statistics.



of Labor Statistics (2014, p. 4), in 2013 women occupied about 27% of correctional officer jobs in jails and prisons. As of 2005, only 13% of correctional officers in federal prisons were women, but 48% of correctional officers in private prisons were (Stephan, 2001, p. 8; Stephan, 2008, p. 4). As mentioned in Chapter 8, it is probably no coincidence that the prisons that pay the most (federal) employ the fewest women as officers, and the prisons that pay the least (private) employ the most.



Staff demographic statistics regarding probation and parole officers for adults and children are not always readily available. According to a recent Bureau of Justice Statistics report, 49% of all state-level parole agency staff are women, but this figure includes all staff, not just parole officers (Bonczar, 2008, p. 3). Unfortunately, the Bureau of Justice Statistics does not supply this level of information regarding probation officers at the state or federal level. However, the Bureau of Labor Statistics (2019, p. 3) reported that in 2018 almost 57% of probation officers and correctional treatment specialists in the country were women.

## Feminism

Female staff would not be employed at the level they are, and female inmates would not have the attention and programming they do (albeit usually less than men and boys), if not for the sustained efforts of feminist scholars and practitioners agitating for their rights and their needs (Pollock, 2002b, 2014; Rafter, 1985; Smykla & Williams, 1996; Stohr, 2006; Young, 1994; Zimmer, 1986, 1989; Zupan, 1992). As indicated by Rafter (1985), the proponents of change in female corrections in the last half of the 1800s and first half of the 1900s tended to be of two minds, as represented by the moralists and the **liberal feminists**.

There were those *moralists*, who were sometimes *social feminists*, as Rafter (1985) termed them, who believed that women and girls involved in the criminal justice system were in effect morally impaired and therefore in need of religious and social remedies (prayers, efforts to keep them chaste, etc.). Women were crudely classified by these moralists as either “good,” and thus acting in conformance with societal expectations for their gender role (labeled the *madonna*), or “bad,” and thus acting in opposition to their expected gender role (labeled the *whore*). This conceptualization and limited view of the possibilities for women and girls and focus on sexuality were also shaped by social class and race or ethnicity. Those women who were of a higher class and who were white were believed to more closely approximate the madonna category—until, that is, they violated societal expectations that they be docile homemakers with nary a thought in their heads. Should they violate both these expectations regarding their gender role *and* social and legal prohibitions against the commitment of crime, then they were **double deviants**. Rather than just being deviants, as men and boys who committed crimes were, women and girls involved in crime were also deviants in terms of societal gender role expectations (Belknap, 2001). Women of lower classes, and particularly women of color, were not expected to attain this madonna status. Women in the lower and even in the working classes—which described most women in the late 1800s and early 1900s—often worked outside of the home in farms, small shops or factories because they had to in order to help support their families; thus, the belief—really a myth—that most women used to work only in the home applied only to middle-class and wealthier women, not to the majority of women. Women of color, who were disproportionately represented in the lower classes both then and now, were seen as more sexual in nature, perhaps as a justification for their exploitation in this manner, and so could not even aspire to a madonna status (Belknap, 2001).

There were others—those who espoused a *liberal feminist* perspective—who believed that the source of the crime problem for female offenders lay more with the social structure around these women and girls (e.g., poverty, lack of sufficient schooling or training, patriarchal beliefs; Daly & Chesney-Lind, 1988). Liberal feminists believed that the solution to female crime lay in preparing those inclined to engage in it for an alternative existence—for work—and sometimes this involved “traditional women’s work” so that they would not turn to crime (Rafter, 1985). Some of these early feminists believed, as liberal feminists do today, that men and women are inherently equal, and as such, women and girls are entitled to the same rights, liberties, and considerations (e.g., in corrections this would be programming, quality of institutions, and equal employment as staff) as men and boys (Belknap, 2001; Daly & Chesney-Lind, 1988).

**Liberal feminists:** People who believe that the problem for girls and women involved in crime lies more with the social structure around them (e.g., poverty and lack of sufficient schooling or training, along with patriarchal beliefs) and that the solution lies in preparing them for an alternative existence so that they do not turn to crime.

**Double deviants:** Women and girls who are deviant because they engage in crime and because they have violated societal gender role expectations.

The moralists triumphed, though not completely, in the argument over what lay at the heart of female criminality. As a consequence, we have had more than a century of correctional operation that has tended to be overly concerned with the sexuality of women and girls (Giallombardo, 1966; Hefferman, 1972; Owen, 1998; Rafter, 1985). Another consequence of this triumph was that reform efforts were directed at training female inmates to be proper wives and mothers while forgetting that as members of the lower classes, they would need to make a living for themselves and their children once they reentered their communities. Despite this morals-of-the-fallen-woman focus—the soiled dove, if you will—feminist women and men were able to agitate for and sometimes get separate facilities for women and girls and other services (e.g., educational and job training) that were geared toward helping women and girls become independent and self-supporting in the free world (Hawkes, 1998; Yates, 2002).

**Patriarchy:** Involves attitudes, beliefs, and behaviors that value men and boys over women and girls (Daly & Chesney-Lind, 1988). Members of patriarchal societies hold the belief that men and boys are worth more than women and girls and also believe that women and girls, as well as men and boys, should have certain restricted roles to play and that those of the former are less important than those of the latter. Education and work training that help one make a living and better pay are more important to secure for men and boys than for women and girls, who are best suited for more feminine and—by definition, in a patriarchal society—less worthy professions.

One societal obstacle to achieving equal treatment in corrections has been **patriarchy**. Patriarchy involves the attitudes, beliefs, and behaviors that value men and boys over women and girls (Daly & Chesney-Lind, 1988). Members of patriarchal societies tend to believe that men and boys are worth more than women and girls. They also believe that women and girls, as well as men and boys, should have certain restricted roles to play and that those of the former are less important than those of the latter. Therefore, education and work training that help one make a living and attain better pay are more important to secure for men and boys than for women and girls, who are best suited for more feminine—and by definition in a patriarchal society, less worthy—professions. Feminist scholars have determined that many cultures even today hold such beliefs and engage in the practices that derive from them.

In the United States, much effort has been expended over the centuries by both male and female feminists to address the patriarchal belief system, and there has been some success in this regard (Dworkin, 1993; Martin & Jurik, 1996; Morash, 2006; Whittick, 1979). In terms of corrections, feminists have been instrumental in pushing for more and better programming for incarcerated and supervised women and girls, for a reduction in the incarceration of girls for status offenses, for increased attention to the sexual abuse of incarcerated women and girls, and for the greater employment of women in adult male and female correctional institutions.

## Females in Corrections: Needs, Programming, Abuse, and Adjustment

**LO 10.3** Explain the special challenges faced by women and girls in corrections.

### Needs and Programming

In an article published in *American Jails Magazine*, Ney (2014, pp. 8–10) succinctly summarized some of the basic facts and differences between men and women in jails, with substantial application to prisons:

1. “Women pose a lower safety risk than men.” What this means is that women do not riot, they don’t assault one another or staff as much, and when they do, they do less damage. They are less likely to be incarcerated for violent offenses.
2. “Women’s pathways to criminal justice are different than men’s.” They are much more likely to be prior victims of abuse and to be impoverished before incarceration than men. They are more likely to have substance abuse problems and to have this problem intertwined with abuse and mental illness.

3. “Women’s engagement in criminal behavior is often related to their connections with others.” They commit crimes with crime partners, and usually those are the men in their lives.
4. “Women entering jails and prisons often report histories of victimization and trauma, and continue to be vulnerable to victimization within correctional settings.” This history makes them more susceptible to substance abuse, mental illness, and targeting by predators as future victims.
5. “Correctional policies and practices have largely been developed through the lens of managing men, not women.” This means that the risk, needs, and responsivity (RNR) issues so key to constructing programming that “works” are not adequately addressed for women.
6. “Jail and prison classification systems can result in unreliable custody designations and over-classification of female inmates.” As a result, women will be held in more secure facilities and sections of facilities than is necessary.
7. “Gender-informed risk assessment tools can more accurately identify women’s risk and needs.” Some research is indicating that assessment might be more accurate—and thus result in more effective programming—if it fits the reality of women rather than men.
8. “Women are more likely to respond favorably when jail (and prison) staff members adhere to evidence-based, gender-responsive principles.”
9. “Transition and reentry from jail to the community can be challenging for women.” Reentry programming should therefore be geared to address their particular needs, which are often similar to men’s but not always.
10. “The cost of overly involving women in criminal justice is high.” Not only are we incarcerating or overly supervising people who are in less need of it, we are stymieing the ability of these women to grow and develop in a prosocial manner, we are depriving children of their mothers, and we are costing the taxpayers approximately twice the amount of money it takes to incarcerate men for someone who is usually less of a threat to the community.

As a practical matter, then, if not just because women and girls have historically been valued less by this society (patriarchy) but perhaps because crime has generally been the purview of men and boys, correctional facilities and correctional practices have tended to focus on men. This focus led to disparate treatment that disadvantaged women and girls from the beginning and resulted in little concern for their needs then or now, as Ney’s (2014) summary indicates (Muraskin, 2003).

Yet women and girls are more likely to have mental and physical health problems than incarcerated men and boys (Morgan, 2013; Schaffner, 2014). They are also more likely to have substance abuse problems than their male counterparts. Moreover, they have the same kinds of educational and job training deficits and needs as men and boys (Gray, Mays, & Stohr, 1995; Morash, Haarr, & Rucker, 1994; Owen & Bloom, 1995; Pollock, 2002b). Their need for gainful employment is likely as great as, if not greater than, that of men and boys because they most often have to support themselves and their children, whereas fewer men had custody of their children before they were incarcerated (Owen, 2006); about 70% of women have custody of their children at the time of their incarceration (Henriques, 1996, p. 77). Moreover, a greater percentage of women—perhaps as high as 60%—were the victims of sexual abuse in their past, and this is likely to negatively shape their self-concept and their

relations with others, thus necessitating more programming (Belknap, 2001; Blackburn, Mullings, & Marquart, 2008; Comack, 2006; Morash, 2006; Pollock, 2002b).

Assuming that policymakers would not want women and girls to reenter the system if for no other reason than they cost much more to incarcerate (because of their needs and a reduction in economies of scale—separate female institutions house fewer inmates but require almost the same number of administrative and support staff as much larger male institutions), one would think that all of their needs would be met with adequate programming and health care. Unfortunately, this has been far from the case in most jurisdictions. Although there has been some recognition by the federal government of the need to develop programming that fits the needs of women and girls, it is unclear how much this has spread to state and local facilities (Morash, 2006; Morgan, 2013; Schaffner, 2014).

Although most of these needs are far from met in correctional environments, and far less than a majority of women are involved in meaningful programming, Pollock (2002b) noted that some states have made renewed efforts to address the needs of women and girls for educational, vocational, parenting, and substance abuse issues and their histories of past victimization. However, the numbers of these programs and their quality (very few are rigorously evaluated in terms of desired outcomes) leave much to be desired (Pollock, 2002a). In a longitudinal study of prison industries in federal women's prisons, Richmond (2014) found that involvement in this work had no effect on reducing rearrest or recommitment to federal prison. Richmond speculated that this lack of effect might be because the work program was not suited to women and their needs. In a review of 155 programs designed to meet the reentry needs of women on community supervision in the 10 largest metropolitan areas, Scroggins and Malley (2010, p. 146) found that the programs were inadequate. The sad truth is that most women and girls who need programming in corrections are not able to access it, or if they are, it is sometimes of dubious worth (Morgan, 2013).

Researchers find that women and girls have programmatic needs and styles that determine whether some rehabilitative approaches are more effective than others (Loper & Tuerk, 2006; Staton-Tindall et al., 2007; Wright, Salisbury, & Van Voorhis, 2007; Smith, 2017). One type of programming with particular relevance for women, given that most have physical custody of their children prior to incarceration, is parenting programs. Loper and Tuerk (2006) found in their research on such programming that it is delivered in several prisons, but its purported value in terms of helping mothers and fathers become better parents has not been rigorously studied (see also Pollock, 2002a; Surratt, 2003). Craig (2009), in her historical-to-the-present review of mother and child programs in prisons, found that many states and localities have had programs in which infants or very small children may stay with their mothers, at least initially. However, most correctional facilities where women are housed do not have such programs, and the qualifications for their use, even in states that have them, vary widely.

In an interesting study of male and female inmates in 20 substance abuse treatment programs, Staton-Tindall and colleagues (2007) found the women reported more psychosocial dysfunction (e.g., anxiety, depression), less criminal thinking (e.g., coldheartedness, entitlement, irresponsibility), and greater involvement in programming (e.g., willingness to participate and receptivity to input) than did the men. The authors maintained that these findings support other research indicating that programming for women must be shaped to fit their abuse histories and mental health needs.

Relatedly, in a study of 272 incarcerated women offenders in Missouri, Emily Wright and her colleagues (2007) found that "gender-responsive" problems related to parenting, child-care, and self-concept affect prison misconduct. Brown (2006), in her study of native and nonnative Hawaiian women imprisoned in Hawaii, developed the alternative but parallel idea of "pathways" women traverse that can lead to crime. A pathway strewn with violence, trauma, and addiction, coupled with discrimination on the basis of race, gender, and class,

is more likely to end in criminal engagement for women. Such a pathway, Brown explained, may be related to poorer treatment outcomes for incarcerated women.

The health care needs of incarcerated women are tied up in needs specific to gender and in the particular pathway that many poor women tread. Women in jails and prisons have numerous gynecological and obstetrical as well as psychological or psychiatric health ailments that are more specific to their gender, along with health problems that are common to all genders. As the health care needs of poor women and children in communities are going unmet, it is not surprising that similar circumstances apply to incarcerated women. Predictably, then, Moe and Ferraro (2003) found from their interviews of 30 women incarcerated in an Arizona jail that although basic needs were met in this jail, when the care required was of the long-term, extensive, or individualized type, it was lacking.



## In Focus 10.1

### ORANGE IS THE NEW BLACK (OR NOT)

The popular Netflix show *Orange Is the New Black* loosely features the sometimes hilarious and sometimes tragic experience of one woman (Piper) in jails and then a federal prison as a result of her drug courier involvement. In later episodes in the first and second seasons, the experiences and life circumstances of several women in the same prison as Piper are also chronicled. The color orange in the title refers to the traditional color of the jumpsuit given to women (and men) in American jails (but rarely prisons), though in reality, their garb in jails varies depending on their security level and the preferences of the facility, typically from orange, to white, to yellow, to red, to striped jumpsuits of various colors against a white background. And in prisons, it is more likely that you'll find the female inmates in jeans and T-shirts than in orange (or other colored) jumpsuits. Of course, the color black in the title refers to the classic color for women's wear (basic black), so the title *Orange Is the New*

*Black* might signify that imprisonment of women and the attendant orange wear is becoming much more common in our everyday lives than is the basic black of a woman in the free world. Or put another way, as per this show and the statistics cited in this chapter, prison is becoming a much more common experience for women, even white women with an upper middle-class background like Piper, but particularly for all of the working-class or poor women of color as well as those who are white, who are also featured in the show.

### Discussion Questions

1. Why has the number of women in jails and prisons increased (metaphorically making orange the new black)?
2. Why do you think shows about imprisonment are so popular these days?

## Abuse

Unfortunately, abuse does not necessarily end at the corrections door. One of the primary reasons that women and girls were removed from facilities for men and boys in the 1800s and 1900s and female staff were hired to supervise them was that they were targets of sexual abuse by correctional staff and male inmates (Henriques & Gilbert, 2003). Although separation from male inmates has reduced this abuse, sexual abuse by male staff—despite likely being much less prevalent than it once was, partly because of the inclusion of more female staff—has not been eliminated.

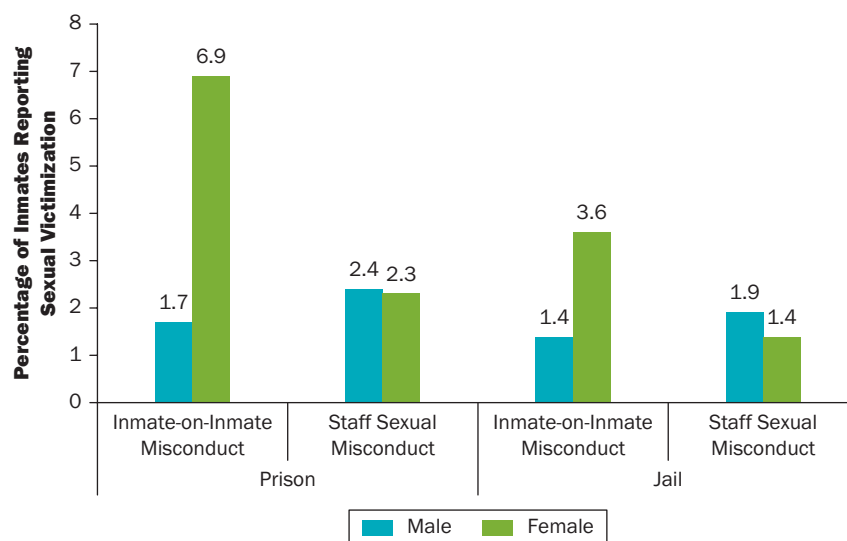
One of the authors of this volume had occasion to serve as an expert witness for the plaintiffs in a civil suit in 2004 against a city in New Mexico whose judge and a few correctional officers for the local jail were involved in the sexual abuse of female inmates (*Salazar et al. v. City of Espanola et al.*, 2004). The male judge and a few male correctional staff had an



arrangement whereby female offenders whom the judge found attractive would be placed in the jail (whether their alleged offenses merited it or not), and then the judge would have access to them when they were sent over to “clean” his chambers. Inevitably, he would make passes at them, using the threat of more jail time, denied privileges, or a lengthened sentence as a way to coerce them into sexual activity with him. Meanwhile, a few of the correctional staff were harassing the female inmates by watching and commenting on their bodies as they showered, making sexual advances toward them, and touching them inappropriately. Two male officers were even involved in removing some women from their cells and having sex with them in the control room at night when no one else was around. There were no female staff on duty at the time of these sexual assaults and this abuse. Thanks to the concerted efforts of several ex-inmates and their attorneys, the judge was convicted of rape, and the judge, correctional staff, and city lost a million-dollar lawsuit (*Salazar et al. v. City of Espanola et al.*, 2004). See Figure 10.3.

■ **FIGURE 10.3** Prevalence of Sexual Victimization Among Adult Inmates

Source: Beck, Berzofsky, Caspar, and Krebs (2013). Most recent data available upon publication.



In an even bigger case, *Tracy Neal v. Michigan Department of Corrections*, the plaintiffs alleged more than two decades of sexual abuse of female inmates in Michigan prisons (Culley, 2012, p. 206). The testimony as to the abuse was compelling, and the combined jury verdicts in the case awarded \$30 million to the plaintiffs and a settlement of \$100 million.

Unfortunately, sexual abuse by male staff of female inmates is not limited to adult facilities. In 2003, the American Civil Liberties Union investigated reports of abuse by male staff of juvenile girls in the Hawaii Youth Correctional Facility and reported that male staff had observed the girls using the toilet and showers, made comments about their bodies, and threatened to rape them. In fact, several girls did have sex with the officers in exchange for cigarettes (Chesney-Lind & Irwin, 2006). A year later, one officer pleaded guilty to three counts of sexual assault and to threatening a female ward. A key circumstance that came out in the American Civil Liberties Union report was that there were no female officers on duty at night when much of the abuse of the girls took place (see also Fleisher & Kreinert, 2009). See Figure 10.4.

Such abuse is particularly damaging when one considers that about half of incarcerated women and girls have experienced some form of sexual abuse in the past (Gray et al., 1995; Henriques & Gilbert, 2003). In recognition of this fact, the Ninth Circuit Court—though not the Supreme Court—put some restrictions on body searches of female inmates by male staff, noting that such searches may serve to revictimize women with sexual abuse histories (*Jordan v. Gardner*, 1993).

Efforts to reduce sexual abuse in correctional institutions have centered on ensuring that staff have the proper training and are supervised sufficiently to prevent abuse. Moreover, the value of disciplinary measures to reinforce appropriate practices cannot be overstated. Clearly, staff who violate the rights of their charges in a way that is as serious as sexual abuse should be fired and prosecuted, and there is some evidence emanating from the reporting required by the Prison Rape Elimination Act of 2003 that this may be occurring (see the discussion of this legislation in preceding chapters on jails and prisons). In addition, the hiring of more female officers to cover living units is another way that correctional agencies have worked to keep sexual predators from gaining access to relatively powerless female victims.

There is no question that lawsuits have been successful in spurring some of these needed changes in correctional practice. But the problem with lawsuits is that their application is hit or miss at best, and the success of plaintiffs is always iffy. For instance, though the *Neal* case was ultimately a success, it took a 15-year battle to get the abuse to stop (Culley, 2012). Therefore, the best preventive measures are those that focus on hiring competent people, training them to behave professionally, supervising them carefully, rewarding them when they behave professionally, and punishing them (up to and including firing and prosecuting them) when they do not behave professionally.

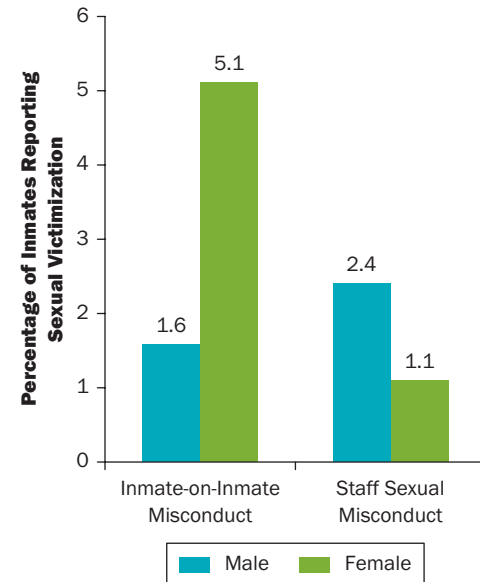
### Adjustment, Misconduct, and Pseudo-Families

Women's adjustment in corrections is associated with their sometimes problematic personal relationships, separation from children, and greater propensity for mental health problems, as well as the fact that in prisons women tend to be charged with infractions for more minor offenses (Owen, 2006). As Van Tongeren and Klebe (2010) found in their study of female inmate adjustment in a maximum security prison in Colorado, adjustment is a multidimensional concept that encompasses an inmate's particular circumstances and environment as well as their criminal thinking and adoption of the prison subculture. For instance, in a study of co-occurring disorders (CODs; mental illness and substance use disorder) of women inmates in Pennsylvania prisons, Houser and Welsch (2014) found that those inmates with CODs were more likely to engage in misconduct than inmates without CODs.

Beyond the mental illness and substance use disorders some women in prison have, another circumstance they often find themselves in is being far from family and friends. There is still only one women's prison in most states, and it is often located away from the urban centers where most of the women are from. As a result, it is difficult to maintain familial relationships and friendships when a woman has a lengthy sentence. Poor families find it much more difficult to visit their incarcerated family members, as they do not have reliable or inexpensive transportation available. Moreover, incarcerated women do not

**FIGURE 10.4** Prevalence of Sexual Victimization Among Juvenile Inmates

Source: Beck et al. (2013). Most recent data available upon publication.





**Photo 10.2** Visits by family members are much appreciated by inmates of correctional facilities.

usually have legal access to cell phones or computers to contact family and friends. The pay phones they do have access to are expensive for poor families, who must pay for the collect calls (even local calls). As many of these women are incapable of writing a letter and their children may be unable to read or be unreachable to them, the ability to maintain contact is further impaired. The separation from children is particularly acute as the mothers lose control over their children's housing and care. Often the children are placed with family members who have histories of abuse or in the foster care system, which in most states is overwhelmed (Child Welfare Information Gateway, 2018; Sharp & Marcus-Mendoza, 2001).

As with men, women incarcerated or supervised in corrections must grapple with the pains associated with that status and find some way to adjust to its strictures. Early researchers in women's prisons (e.g., see Giallombardo, 1966) reported on the formation of pseudo-families as a way for women to meet their needs for companionship, support, and love as well as sexual gratification. It was thought that women were importing these familial roles from traditional family structures and playing them out in the prison setting. In any given pseudo-family, there were inmates who took on the roles of fathers, mothers, grandmothers, daughters, aunts, and cousins. More recent research has shown that some women do indeed form "families" while in prison, but the strength of these relationships is perhaps more casual than was first reported (Owen, 1998). Moreover, as might be expected, women incarcerated for longer periods of time and who are farther from their release dates may be more likely to maintain their pseudo-familial relations than those who are not as immersed in the subculture because of a shorter incarceration.

## ? Ethical Issue

WHAT WOULD YOU DO?

You are a female probationer living in the community. Your probation officer keeps coming on to you, but you aren't interested. Last week, at a family birthday, you had a beer, and the next day, your officer ordered a urinalysis. It came back

"dirty" for alcohol. Now, your probation officer is saying that in exchange for sexual favors, he won't violate your probation. What do you think you should do? What are the likely consequences of any action you take?



## Policy and Research

### GENDER PATHWAYS TO COMMUNITY CORRECTIONS, JAILS, AND PRISONS

For several years now criminal justices and criminologists have been researching and writing about the types of circumstances and choices that typify the life course of someone entangled in the criminal justice system. For girls and women, such circumstances include childhood poverty, low levels of education, poor neighborhoods and schools, abuse and neglect as a child and abuse as an adult, mental illness, substance abuse, and involvement with criminally engaged partners (Bloom, Owen, & Covington, 2003; Brown, 2006; DeHart, 2008; Owen, 1998; Simpson, Yahner, & Dugan, 2008). The effect of victimization on subsequent offending for such women is clear: Those who experience more

victimization as children are also more likely to be involved in the criminal justice system—including corrections—earlier and are more likely to continue their own criminal engagement into adulthood.

#### Discussion Questions

1. Why would victimization as a child and as an adult lead to more involvement in crime?
2. Are men and women likely to differ in their pathways to crime? Why, or why not?
3. What can be done to change the path to criminal involvement for girls and women?

## Female Correctional Officers

**LO 10.4** Discuss the challenges that female staff have overcome in corrections and how they did so.

An increasing number of women are entering the field of corrections. They have particular challenges they will face and need to overcome in this occupation.

### Overcoming Employment Obstacles

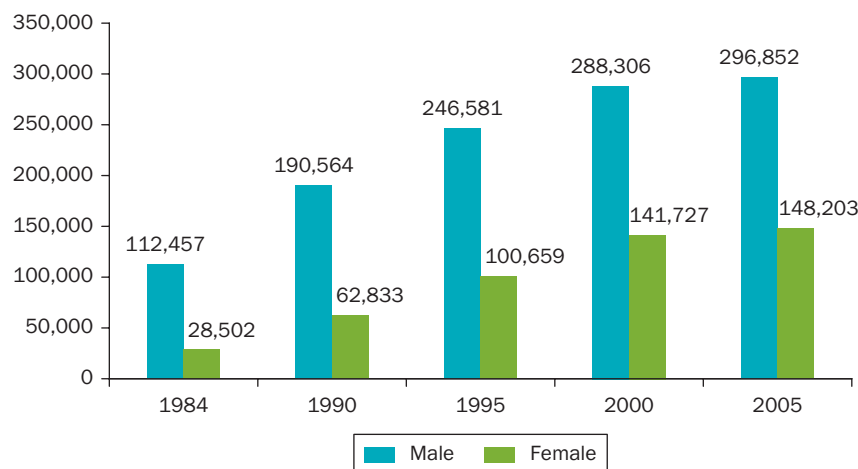
As with the accused and convicted in the system, women have always constituted a minority in terms of correctional staff (as discussed earlier). Although one would expect that women might constitute a greater percentage of staff given their representation in the larger community, the current figures actually represent a significant improvement over 30 or 40 years ago. At that time, women—with the exception of matrons in women's and girls' facilities, who worked for lower pay than men working in male facilities—were prohibited by practice, tradition, or law from working in the more numerous men's and boys' correctional institutions or in probation and parole.

Although they were often prohibited from having official and paid roles in working with correctional clients, women were true partners in the work in America's early and rural jails. Ruddell and Leyton-Brown (2013, p. 270) found in their content analysis of newspaper articles in rural areas from 1900 to 1970 that sheriffs' wives in what were termed *mom-and-pop jails* “admitted and supervised arrestees, thwarted jail escapes, apprehended escapees, and challenged lynch mobs.”

■ **FIGURE 10.5** Number of Male and Female Correctional Employees, 1984–2005

Note: The data from the 1984 census (Stephan, 1987) was for “state adult correctional facilities”; federal institutions were excluded.

Sources: Stephan (1987, 1992, 1997, 2008) and Stephan and Karberg (2003). Most recent data available.



## Perspective From a Practitioner

**KAY HEINRICH, CORRECTIONAL PROGRAM MANAGER**

**Position:** Former correctional program manager (current associate superintendent)

**Location:** Washington State Department of Corrections

**Education:** MA in counseling and education, MA in criminal justice, and PhD in criminal justice

### What are your primary duties and responsibilities?

The Prison Division correctional program manager is an integral part of the division's management team. This person is responsible for implementation of evidence-based practices (EBPs) that affect the Prison Division. This includes assisting with staff development related to evidence-based interventions. The correctional program manager provides operational oversight for evidence-based units and institutions, focusing on resource use and staff-training needs and operationalizing EBPs within the Washington State Department of Corrections (WADOC) intensive-management, close-custody, medium, and minimum units. This position contributes to the mission of the Department of Corrections by ensuring that the Prison Division delivers EBPs consistent with

resource allocations and established principles. These principles target offenders' risks and needs to achieve the Department of Corrections performance goals of improved public safety, decreased recidivism, and the operationalization of core correctional practices. Core correctional practices provide staff with tools to hold offenders accountable through effective interventions that contribute to changing offender behavior. The correctional program manager is responsible for assisting facilities in the operationalization of these principles. In coordination with established chains of command and other divisions, this individual supports the fidelity of the EBP structure and delivery within the prisons by assessing data, observing operations at program sites, and interacting with staff and offenders. Previously, for the WADOC, I worked for 17 years as the clinical supervisor for the WADOC Chemical Dependency Unit researching EBPs, simultaneously designing, facilitating, training for, and implementing chemical dependency programming treatment, including therapeutic communities, intensive outpatient programs, and a reentry continuum to the community for the incarcerated, chemically addicted offenders.



### What are the characteristics and traits most useful in your line of work?

- Perseverance and flexibility
- Honesty and integrity
- Practice what you preach
- Collaboration and communication skills
- Open minded
- Ability to admit defeat and continuing on while maintaining integrity
- Trustworthy
- Strong work ethic and ability to meet with staff during all three shifts
- Healthy boundaries between and within personal, professional, and offenders' borders
- Understanding of organizational development, culture, attitudes, and the stages of change within the institution and individuals, including offenders
- Getting along with others, which includes a diverse population of staff and offenders
- No matter how competent you are, if you cannot fit in, you will not be promoted
- Dealing with offenders' criminal histories and crimes, with the ability to remain objective in dealing with the offenders on a daily basis
- Dealing with offenders and managing staff

### Please describe a typical workday.

There is no typical workday. Each day depends on the prison's level of security and the immediate needs of the institution to meet the safety and security of staff and offenders. For example, you may have meetings and training sessions planned, treatment groups scheduled, and individual

priorities; however, if count is not cleared, there is an act of violence in the units or yard, or a medical or mental health emergency occurs, everything stops to accommodate correctional officers' responsibilities to maintain control and management of the prison. When the prison is under "normal" status, responsibilities include traveling to the prisons where the evidence-based programs are facilitated to ensure adequate staff are available and trained, plus that staff are supported for working in a therapeutic role versus a custodial role. Labor unions, shift work, and a paramilitary environment are additional considerations that influence program implementation and facilitation, which make each day atypical. The prisons are scattered throughout Washington State, so travel is extensive, and use of GPS is mandatory. This position requires knowledge of each prison's administrative and management personnel and style to include the political, hierarchical expectations from headquarters. A correctional program manager must have the ability to maintain neutrality in order to ensure that EBP are facilitated with integrity and adherence to the model's curriculum. Neutrality extends toward each of the diverse offender populations (maximum to minimum offender classification), management styles, and cultures of every prison served according to the personalities, values, and attitudes of the superintendent and executive management team.

### What is your advice to someone who wants to enter your field?

Stay away from the naysayers and negative staff. Don't get caught up in the politics at the prison or headquarters level. Don't get personally or intimately involved with fellow employees. Stick to your value system and the important role each position brings to achieving the overarching goal of offender change and public safety. Never lose your sense of humor, belief that people (staff and offenders) can change, hope in humanity, and belief that good always overcomes evil.

However, as mentioned earlier, it was not until the Civil Rights Act of 1964 was passed and amended in 1972 that women were given the legal weapon to sue for the right to work and be paid and be promoted in all prisons, jails, detention centers, juvenile facilities, and halfway houses as well as in community corrections. Many women did, in fact, sue; they had to if they wanted the same kinds of jobs and promotional opportunities then available only to men in corrections, policing, and law (Harrington, 2002; Hawkes, 1998; Stohr, 2006; Yates, 2002). As a result of this agitation and advocacy, slowly the available jobs and promotional opportunities became open to these pioneering women, resulting in the more diverse correctional workforce we see today. See Figure 10.5.

## Current Status

As the number of women employed in corrections has increased, three issues have been particularly problematic for them in the workplace:

1. Whether women's rights to equal employment in male correctional facilities are more important than male inmates' rights to privacy in those same facilities
2. Whether women are physically and mentally suited to do correctional work with men
3. How to deal with sexual and gender harassment—primarily from other staff—while on the job

## EQUAL EMPLOYMENT VERSUS PRIVACY INTERESTS OF INMATES

As mentioned before in this section, women achieved the legal right to equal employment in corrections through law and lawsuits. Most of the jobs in institutional corrections or in communities are in dealing with male inmates or offenders; however, one can certainly understand male inmates' perspective that they would like some privacy when engaged in intimate bodily functions such as using the toilet or showering. The courts in this matter, however, have tended to side with the right to equal protection of female employees or prospective employees over the male inmates' right to privacy (Farkas & Rand, 1999; Maschke, 1996). Their reasoning is likely as much influenced by the fact that inmates in the United States have very limited rights while incarcerated, with no real right to privacy, as by the fact that correctional staff should be respectful and professional, no matter their gender, in their dealings with inmates.

## ? Ethical Issue

### WHAT WOULD YOU DO?

As a new female correctional officer in a male prison, you are finding it difficult to gain acceptance from some of your older male colleagues. Of particular concern is whether you are tough enough to lead people who may not respect you as an officer. An older female officer advises you to act disrespectfully toward

a few of the less well-regarded inmates (i.e., sex offenders) in front of those doubtful staff as a way of establishing your "toughness" credentials. Although you can appreciate that doing so may alleviate concerns by a few of these staff, it also requires you to do something you find abhorrent. What would and should you do in this instance?

## QUALIFICATIONS FOR THE JOB

The issue of whether women are physically and mentally qualified to work with male inmates has generally become a settled matter in most institutions, agencies, and states: They are. But when they were first making inroads into the correctional workplace, there were plenty of doubts about the ability of women to handle the work (Jurik, 1985b, 1988; Jurik & Halemba, 1984; Zimmer, 1986, 1989). Even with regard to their propensity to use aggression in the course of their work, men and women correctional staff are similar (Tewksbury & Collins, 2006). However, the Supreme Court has left open the possibility that if there is a bona fide job requirement that women could not fulfill in a male prison, they can be excluded from that work (Bennett, 1995; Maschke, 1996).

In a qualitative study of female parole agents in California, Ireland and Berg (2006) noted that these agents reported subtle harassment in the form of less desirable shifts or assignments because of their gender. The women also felt they were overlooked for promotions and an administrative career track. One 40-year veteran of the department observed that it was not the clients who harassed the women agents but their colleagues who “often questioned [their] competence and treated [them] unprofessionally” (p. 140). In response to such bias and views, the women reported that they overcompensated, or did more than was expected of males on the job. Some female parole agents adapted by taking on stereotypical feminine roles such as acting helpless and in need of male assistance, or flirtatious, or maternal. Still another adaptation by these agents was to refuse to acknowledge there was any bias at all in the workplace; this latter group of women did not think that considerations of gender or race or ethnicity had hampered their ability to advance in their career.

Clearly, because of their biology, most women are not as physically strong as most men, and sometimes strength is called for in dealing with an unruly inmate. However, the use of brute force is rather rare in most correctional institutions and in the community when one is functioning as a probation or parole agent (note the discussion of violence in corrections in an earlier section). Second, there are defensive (and offensive) tactics that give a trained and armed woman some advantage in a physical altercation with a male inmate. Third, there is some evidence that female staff may have a calming effect on male inmate aggression because they are more inclined to use their interpersonal and communication skills and are less likely to be seen as a threat (Jurik, 1988; Jurik & Halemba, 1984; Lutze & Murphy, 1999; Zimmer, 1986).

Some research has indicated that both male and female correctional officers value a service orientation over a security orientation in their work, so their work styles and preferences may be more similar than dissimilar (Farkas, 1999; Hemmens, Stohr, Schoeler, & Miller, 2002; Stohr, Lovrich, & Mays, 1997; Stohr, Lovrich, & Wood, 1996). Research in one state indicated that female correctional officers in prisons might be more fearful of victimization by inmates than are their male colleagues (Gordon, Proulx, & Grant, 2013). In research on attitudes of 192 male and female jail officers in a southwestern state’s jail system regarding conflict resolution with inmates, Hogan and her colleagues also found that men and women reacted similarly in this area, though when the gender of the inmate was female, they were more likely to react aggressively and they perceived a greater physical threat from male inmates (Hogan, Lambert, Hepburn, Burton, & Cullen, 2004).

In research on the attitudes of 641 male and female wardens, Kim and colleagues found that 90 of the female wardens were more inclined to value programming and amenities that promoted health, education, and programming for inmates in their prisons than were their male colleagues (Kim, DeValve, DeValve, & Jonson, 2003). However, these researchers also found that there were many more similarities than differences between men and women as to how they viewed and appreciated their work.

Taken in total, what all of this research on women’s ability to do the work and on the differences and similarities in work styles between men and women indicates is that men and women mostly view and do correctional work similarly; that some women, perhaps more than some men, can calm an agitated inmate; and that some men, perhaps more than some women, are better at physically containing an agitated inmate.

### SEXUAL AND GENDER HARASSMENT

Unfortunately, the problem with gender and sexual harassment of female staff by male staff is not yet a settled matter. This is not to say, of course, that male staff are not harassed by female staff. This does happen and can be as debilitating for the male employee as it is for the female. But a number of studies have shown, over a period of years, that women are much more likely to be the victims of male harassment by bosses and coworkers in the workplace and that when men are victims, they are as likely to be harassed by other men as by women

**Quid pro quo sexual**

**harassment:** Involves something for something, as in you give your boss sexual favors and the boss allows you to keep your job.

**Hostile environment:**

Occurs when the workplace is sexualized with jokes, with pictures, or in other ways that are offensive to one gender.

(Firestone & Harris, 1994, 1999; Mueller, De Coster, & Estes, 2001; O'Donohue, Downs, & Yeater, 1998; Pryor & Stoller, 1994). Male institutions, in particular, with their smaller percentages of female employees and managers and their traditions aligned with male power in the workplace, are more susceptible to this kind of behavior than other correctional workplaces (Lawrence & Mahan, 1998; Lutze & Murphy, 1999; Pogrebin & Poole, 1997). The harassment that occurs can be of the **quid pro quo sexual harassment** type (something for something, as in you give me sexual favors and you get to keep your job) or the less serious, but still workplace stultifying, **hostile environment** harassment (when the workplace is sexualized with jokes or pictures or in other ways that are offensive to one gender).

Thankfully, there are remedies, imperfect and cumbersome though they might be, that can be used to stop or at least significantly reduce such harassment. Initially, women had to sue in order to stop the harassment, because many managers of their workplaces simply would not do anything. In one mid-1990s case, one of the authors of this book served as an expert witness for the plaintiff against the state of California's San Quentin Prison. The female victim won more than \$1 million for enduring harassment by several male staff and one inmate that started in the 1970s and ended when she quit in frustration in the 1990s; this harassment was never stopped by the prison administration (*Pulido v. State of California et al.*, 1994). As successful as this case was, there was incontrovertible evidence of the harassment (as provided by memos, diaries, staffing logs, and witnesses)—evidence that is usually not available to support most victims' stories. Moreover, the female victim, an African American woman, lost her job and had to endure almost 2 years of an uncertain legal battle before the case was tried and the judge ruled. Even then, the state of California appealed, and it took another year before the matter was finally settled in the plaintiff's favor.

What this story illustrates is that there are few true "winners" when sexual and gender harassment cases go to trial. Most such cases fail because there is not sufficient evidence of the abuse beyond a "he said, she said" scenario. Victims of such abuse suffer untold harm in terms of their psychological and physical well-being, both during the abuse and as they relive it during the legal process. And even when cases are successful at trial, taxpayers (not just the instigators of the abuse, who often do not have the "deep pockets" of their governmental employer) have to pay for the illegal practices of their own governmental entities and actors.

In other words, there has got to be a better way—and there is. Researchers and correctional practitioners have agreed that there are proactive steps managers and other employees can take to prevent or stop sexual and gender harassment in the correctional workplace. Such steps would involve hiring, training, firing, and promoting on the basis of respectful treatment of other staff and clients. Training in particular can reinforce the message of a no-tolerance policy regarding harassment. But to be effective, employees need to see that people are rewarded when they do adhere to the policy or punished when they do not.

As a discussion of the current status of female staff working in corrections would indicate, women have made some significant advances in these workplaces. They have not just made gains in employment; female supervisors and managers are also no longer anomalies in most states. Although women are nowhere near matching the numbers of men as staff and management in corrections and are still grappling with the pernicious problem of sexual and gender harassment, nonetheless they have come a long way since the days of working as matrons with lower pay and less respect—attributes that typified their work for most of the history of corrections.

## SUMMARY

### LO 10.1 State the history of women in corrections.

- The study of women and girls in corrections was not always a priority for scholars (Flavin & Desautels, 2006; Goodstein, 2006; Mallicoat, 2011). Patriarchal perceptions and beliefs, along with the status of women as a numerical minority, have shaped organizational and scholarly priorities in a way that favors men and boys. Since the 1970s, however, there has been more scholarly focus on the reality of women and girls who work, live, or are supervised under the correctional umbrella.
- Part of this shift in focus has occurred as the result of feminist work to equalize the work for women and the living and supervision arrangements for women and girls under correctional supervision.

### LO 10.2 Describe the current state of women in the correctional system for both those incarcerated and those employed in it.

- The research presented in this chapter should shift our perspective from the much more frequent and normative study of men to that of women. When we shift our gaze to the female side, we are as likely to see the sameness of men and women as the contrasts that distinguish them (Rodriguez, 2007; Smith & Smith, 2005). We might also see that the life course of a woman or girl entangled in the criminal justice system (e.g., see Brown, 2006; Wright et al., 2007) forms a predictable pattern that might be fruitfully addressed if we only had the will to do so.

- Despite the gains women have made in corrections, there is still evidence that sexual and gender harassment of female staff and the sexual abuse of female inmates continue in some correctional environments. Although organizational remedies exist to deal with such abuse, they are not always employed by managers.

### LO 10.3 Explain the special challenges faced by women and girls in corrections.

- Recent research on women and girls under correctional supervision has highlighted the outstanding needs they have for educational, substance abuse, work training, parenting, and surviving abuse programming. Unfortunately, it has also shown that little programming is provided in jails, prisons, or communities to meet these needs.

### LO 10.4 Discuss the challenges that female staff have overcome in corrections and how they did so.

- Female correctional officers have faced a number of legal and institutional barriers to their full and equal employment in corrections.
- For the most part, many of these formal barriers have been removed as female officers have demonstrated their competencies in handling correctional work.
- Some researchers have noted a feminine style to officer work that involves the successful use of interpersonal communication skills to address inmate needs.

## KEY TERMS

Double deviants 251  
Hostile environment 264  
Houses of refuge 247

Liberal feminists 251  
Mount Pleasant Prison 245  
Patriarchy 252

Quid pro quo sexual  
harassment 264

## DISCUSSION QUESTIONS

1. In what ways have women and girls occupied a minority status in corrections? How has that status affected how they are treated in the system?
2. What is feminism, and what do feminists advocate? How have they had an effect on the work of women and the experience of women and girls with incarceration?



3. What is patriarchy? What kind of effect did and does patriarchy have on corrections for women and girls? How might it negatively affect the experience of men and boys?
4. What sorts of factors are likely to lead to the greater abuse of female inmates in correctional institutions? How might such abuse be prevented?
5. What sorts of factors are likely to lead to sexual and gender harassment in correctional work? How might such harassment be stopped or prevented?
6. How might female officers' supervision styles differ from those of male officers? What might be the advantages of hiring women to work with men and boys in corrections? What might be the advantages of hiring men to work with women and girls in corrections?





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# 11

## People of Color and Corrections

### TEST YOUR KNOWLEDGE

Test your current knowledge about racial-ethnic minority groups in this country and their experiences as staff and inmates in corrections by answering the following questions. Check your answers on page 388 after reading the chapter.

1. The race of a person is determined by their biology. (True or false?)
2. The ethnicity of a person is determined by their culture. (True or false?)
3. Explain what happened in the Scottsboro case and why it is considered emblematic of how African Americans were handled by the criminal justice system in the earlier half of the 20th century.
4. Name at least three facts that would indicate that racism still exists in the criminal justice system of today.
5. Very few Native Americans were in the Americas when Columbus landed. (True or false?)
6. Chinese and Japanese American immigration was widely supported in the 19th and 20th centuries. (True or false?)
7. Describe the reasoning for the internment of Japanese Americans in 1942. Why weren't German Americans also placed in such camps?
8. There is a connection between class, race or ethnicity, and crime. (True or false?)
9. The drug war has led to the increased incarceration of Latinx people and Black people in the United States. (True or false?)
10. Crack cocaine and powder cocaine are pharmacologically different. (True or false?)
11. Research shows that Black people use more drugs than white people. (True or false?)

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 11.1 Define the terms *race*, *ethnicity*, *disparity*, and *discrimination*.
- 11.2 State some of the history of racial-ethnic minority group members in this country.
- 11.3 Explain the connection between class, race or ethnicity, and crime.
- 11.4 Examine why the criminal justice system has not been race neutral in its treatment of people of color.
- 11.5 Discuss the special challenges faced by racial-ethnic minority group members in corrections.
- 11.6 State the statistics related to employment of people of color in the correctional system.

### UNDOCUMENTED WORKERS AND THEIR SIDE OF THE STORY

One of the largest groups of cases before the federal courts and in some form of federal corrections (jails and prisons) involves unauthorized immigrants from Mexico and Latin America (Light, Lopez, & Gonzalez-Barrera, 2014). Yet though they are violating U.S. immigration laws, De La Torre (2013), in her ethnographic research on Mexican migrants and their versions of their immigration stories, found that these immigrants do not see themselves as criminals at all; rather, they see themselves as moral actors confronting impossible circumstances that require crossing the border in order to provide for themselves and their families.

Those interviewed often characterized their coming to the United States as a moral action necessitated by the conditions of their life in Mexico. Most stressed their inability

(Continued)



(Continued)

to support their families or themselves in Mexico because of the inadequate wages and limited opportunities for mobility in their home communities. “For instance, Juan Carlos, an immigrant in his mid-20s, came to work in Chicago because he wanted a better economic position that would allow him to afford necessary things, such as milk to feed his newborn daughter. His opportunities were limited as he struggled to provide for his family while living in Acapulco. Women also recounted how they had to sacrifice to feed families, raise their children, and take care of their older parents and relatives while engaged in paid work. For example, Araceli, in her early 30s, came to the United States because she was the only provider in her household since her older parents could no longer work and her younger siblings had started college in Guanajuato. In coming to the United States, she sacrificed her own chance to attend college in Mexico” (De La Torre, 2013, p. 272).

## Introduction: People of Color and Corrections

### LO 11.1 Define the terms *race*, *ethnicity*, *disparity*, and *discrimination*.

The race and ethnicity of America’s population have shaped its laws and practices from the beginning. At the very writing and ratification of the Constitution, full citizenship was denied to those who were not White and, for many decades, to those who were not male and in possession of significant amounts of property. The institution of slavery, the forcible seizure of Native American lands, and the limitations on the immigration of people of color and the rights of those immigrants while in the United States have all marked and marred this country. Accordingly, police agencies, courts, correctional institutions and programs, and actors in these entities have historically treated people differently on the basis of their race and ethnicity.

Historically, racial-ethnic minority group members were more likely in some parts of the country to be incarcerated when they were innocent or sentenced for periods that were longer than those for white people. Once in the correctional system, racial-ethnic minority group members were sometimes segregated into separate institutions, sections of institutions, and programs. At times they were given less desirable jobs and housing in jails and prisons. Whether such discriminatory treatment continues today is a matter of some debate, but there are indications that some laws, police, courts, and correctional practices have the effect of maintaining a separate and unequal system for minority group members. In this section, we briefly discuss this history and use it as a context for current practices and experiences in corrections.

### Defining Race, Ethnicity, Disparity, and Discrimination

**Race:** The classification of humans into populations or groups based on various factors such as culture, language, social practice, or heritable characteristics.

**Race** is a term that refers to the classification of humans into populations or groups based on various factors such as culture, language, social practice, or heritable characteristics. (Gabbidon, 2018). The extent to which racial groups truly differ biologically is still being determined by scientists. Scientists are still putting together the collective pieces of our human history. However, the genotyping of the whole human race indicates that our species likely originated in Africa (Diamond, 1997; McAuliffe, 2010). Waves of migration then occurred, beginning at least 50,000 years ago and continuing over thousands of years, to Europe and to Asia, resulting in variations of skin color and other features of racial groupings, which in turn migrated to other continents and islands (Mann, 2006; McAuliffe, 2010). It is worth noting that even as these physical distinctions were developing, much intermingling occurred, both historically and currently, among groups, resulting in populations that



are substantially mixed rather than distinct in their “racial” heritage. For this reason, using racial designations such as *White* or *Black*, or *Asian* might be necessary to ensure that one group is not advantaged over another, but we should recognize that these designations can be somewhat arbitrary because true racial differences, though visible to the eye, may be measured more in gradations rather than in clear distinctions, particularly in the most racially mixed societies.

**Ethnicity**, on the other hand, refers to groups of people with a shared culture. An ethnic group will often have a distinct language as well as distinct values, religion, history, and traditions. Ethnic groups may be made up of several races and have a diverse national heritage. For instance, the terms *Hispanic* and more recently *Latinx* are applied to an ethnic grouping in the United States that includes White, Black, and Asian racial groupings whose ancestors may hail from Cuba, Puerto Rico, Mexico, or Central or South America. Italians, Irish, French, German, and other ancestral ethnic Europeans who have immigrated to the United States are usually racially White, but not always, because while in Europe or after immigrating to the states those groups may have intermingled with people of African or Asian heritage. For instance, people known as Creoles are both ethnically and racially differentiated by their White and African racial background and the French ethnic cultural influences in Louisiana. And Black Irish Americans are primarily White ethnic Irish people who intermingled with Spanish Moorish people while in Europe (who were at least partially from North Africa) and then immigrated as Irish to the United States. Among Black people in the United States, there are distinct ethnic differences between those whose ancestors have been in the country for hundreds of years either as free people or who were forcibly brought here through slavery and those whose families are more recent immigrants from Africa or predominantly racially Black areas of the world (e.g., immigrants from Caribbean Islands like Haiti). More recent immigrants from the Sudan, Nigeria, or Kenya are different ethnically; that is to say, they have a distinct culture, as well as nationality, from one another and from those Black people whose families have been in the United States for generations.

Clear, Cole, and Reisig (2011) defined **disparity** as “the unequal treatment of one group by the criminal justice system, compared with the treatment accorded other groups” (p. 527). In turn, they defined **discrimination** as “differential treatment of an individual or group without reference to the behavior or qualifications of the same” (p. 527). We would add that disparity can happen in many organizations and entities and is not restricted to the criminal justice system, and often discrimination is linked in law to classes of people distinguished by race, ethnicity, gender, age, disability, religion, nationality, sexual orientation, and income.

## A Legacy of Racism

### LO 11.2 State some of the history of racial-ethnic minority group members in this country.

The legacy of racism (discriminatory attitudes, beliefs, and practices directed at one race by another) runs long and deep in the United States. Notably, sometimes the term *racism* is also applied when one ethnic grouping holds discriminatory attitudes or beliefs, or



**Photo 11.1** California inmates in Chino State Prison sitting in mixed-race groups.

**Ethnicity:** Refers to groups of people with a shared culture. An ethnic group often has a distinct language as well as particular values, religion, history, and traditions. Ethnic groups may be made up of several races and have diverse national heritages.

**Disparity:** Occurs when one group is treated differently and unfairly by governmental actors, compared with other groups.

**Discrimination:** Occurs when people or groups are treated differently because of who they are (e.g., on the basis of race, ethnicity, gender, age, disability, religion, nationality, sexual orientation or identity, or income) rather than their abilities or something they did.

engages in discriminatory practices, against another ethnic group. Correctional institutions and programs as social institutions are products of their larger social, political, and economic environments, and therefore the legacy of racism has affected and continues to affect their operation.

## Black Americans

Slavery historically in the United States involved the involuntary servitude of Black Africans by White Europeans and was practiced almost from the settling of the country (Davis, 2008). Many of the Founding Fathers owned enslaved people, and the practice of slavery was protected in the Constitution through the three-fifths designation of enslaved people in Article 1 (three fifths was the worth that enslaved people had for states that wanted to count them for representation in Congress) and Article 4 (which caused enslaved people who were fugitives to be returned to their enslavers).

Slavery was a lucrative business for both northern and southern ship owners in the colonial United States and for plantation owners in the South because it provided the backbreaking agricultural labor that built the southern economy. Although slavery officially ended with the Civil War between the northern and southern states and the subsequent adoption of the Thirteenth Amendment in 1865, it lived on in civil society and law for 100 years through discriminatory laws and practices (see the discussion of Jim Crow laws later in this section).

Correctional institutions, particularly in the South following the Civil War, were devised to maintain the slavery system, with newly freed and often unemployed Black people incarcerated for minor or trumped-up charges and leased out to southern farmers for work on the same plantations on which they or their brethren had been enslaved (Oshinsky, 1996; Young, 2001). During this same time period, in the North and Midwest, Black inmates were sometimes segregated from white inmates in prisons and jails and given substandard housing and the least desirable work assignments (Hawkes, 1998; Joseph & Taylor, 2003).

The Scottsboro case (see In Focus 11.1) exemplified the racist attitudes of communities and how those attitudes were translated into discriminatory practices by law enforcement, courts, and corrections (Walker, Spohn, & DeLone, 1996). The lynching of Black men, fueled by mob rule and widespread Ku Klux Klan and other hate group activity, was also practiced in many states and communities following the Civil War and well into the 1900s (Equal Justice Initiative, 2015; Keil & Vito, 2009). Lynching reinforced a culture of fear that prevented Black people from achieving an equal and decent footing in communities. The Klan's avowed purpose was to target and persecute Catholics, Jews, and people of color—especially Black people—and it was particularly active in the South and in the Midwest. Membership was widespread among public and criminal justice officials in the first half of the 1900s and even included those who rose to such lofty heights as the Supreme Court (e.g., Supreme Court justice Hugo Black was a member in the 1920s) and Congress (e.g., Senator Robert Byrd of West Virginia was a member and defender of the Klan well into the 1950s).

There is little doubt that up until the civil rights movement and the implementation of laws and practices that reduced racism in public and private organizations, there was *institutional racism*—or racism practiced by many, if not most, institutional members—in criminal justice and other organizations. In correctional institutions, it was not until the civil rights movement morphed into the prisoner rights movement in jails and prisons that these practices were changed and Black and White inmates were treated more similarly, or were legally required to be so treated, in correctional institutions (Belbot & Hemmens, 2010).

The incarceration rate of Black people compared with white people is 3.3:1 in jails (Zeng, 2019, p. 4). It is 5.8:1 for Black men and 1.8:1 for Black women versus White men and women, respectively, in prisons (Carson, 2020, p. 1). However, there has been a marked decline in the incarceration of Black men and women in jails and prisons: From 2008 to 2018, incarceration of Black people decreased by 28% in both jails and prisons, the lowest

level it has been since 1990 and 1989, respectively (Carson, 2020, p. 1; Zeng, 2020, p. 1). As far as the probation and parole populations of Black people are concerned, the representation, by percentage, of Black people among probation caseloads decreased from 2000 to 2016 by 3 points, from 31% to 28% and by 2 points for parole, from 40% to 38% (Kaeble, 2018, pp. 17, 24).

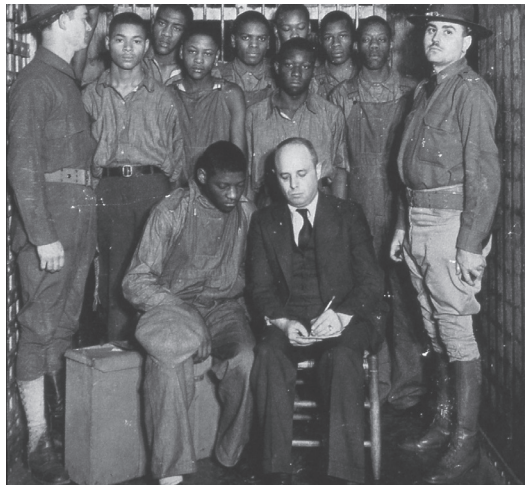
The trends for rates of incarceration of children of color compared with White children are not so favorable, though. In 2015 (the latest year for which we have data), the Black-to-White ratio for children placed in residential correctional facilities was 5.03:1, and for Latinx youth it was 1.65:1 (Office of Juvenile Justice and Delinquency Prevention, 2019, p. 1). These rates represent an increase from 2006 when the rates were 4.37 (Black youth)



## In Focus 11.1

### THE SCOTTSBORO CASE

"Scottsboro Boy Trial" / Wikimedia Commons



**Photo 11.2** The Scottsboro boys meeting with their lawyer in jail.

In 1931, nine Black teenage boys were hitching a ride on a freight train headed to Memphis, Tennessee. The train was stopped, and they were arrested and accused of the rape of two White girls on the train. The case was first tried in Scottsboro, Alabama, where the boys received little representation, and the trial was rushed. All of the boys in this first trial, except the youngest (a 12-year-old), were convicted of rape and sentenced to death.

The case was appealed and made it all the way to the Supreme Court. In the famous decision *Powell v. Alabama* (1932), the Supreme Court ruled that the due process rights of the accused—in this case, their right to counsel in a capital case, particularly as these teenagers were indigent and illiterate—were violated. The Court reversed their convictions and sent their case back for retrial.

In the second trial, seven of the eight convictions were upheld by all-White juries. (Black voters in Alabama were purposefully excluded from lists for juries.) The reconvictions happened despite the fact that the case was moved to Decatur, Alabama, for retrial, and one of the two victims recanted her story, claiming the story was made up and that the boys never touched either of them.

The Supreme Court, in 1935, again reheard the case in light of the all-White jury composition; the Court reversed again. The Alabama judge set aside the verdict and scheduled a new trial, at which the accused were again found guilty.

Eventually, charges were dropped for four of the nine defendants, but the others received sentences of 75 years to death, and three of those five served prison time. The one who was sentenced to death was eventually pardoned, in 1976 (Walker et al., 1996). This case is widely regarded by legal scholars as a gross miscarriage of justice and as emblematic of the way Black Americans were treated in racist sectors of this country well after slavery was abolished.

### Discussion Questions

1. Do you think the time and place of this event affected its outcome?
2. How does this case and how these teenage boys were treated compare with how young Black men and boys are treated by the police today?
3. Is there room for improvement in race relations between the police and Black community members?
4. Why is it so difficult for racial and ethnic groups in this country to, as Rodney King asked, "just get along"?

and 1.82 (Latinx youth) to 1 (White youth), respectively. However, it is also worth noting that the rates of placement of all youth from 2000 to 2019 decreased substantially, by 60% (Sawyer, 2019, p.1). This resulted in a change from 743 in 2006 to 433 in 2015 (or a decrease in the rate of 310) for Black youth, from 309 in 2006 to 142 in 2015 (or a decrease in the rate of 167) for Latinx youth, and from 170 in 2006 to 86 in 2015 (or a decrease in the rate of 84) for White youth (Office of Juvenile Justice and Delinquency Prevention, 2019, p. 1).



## In Focus 11.2

### FOURTEEN EXAMPLES OF RACISM IN THE CRIMINAL JUSTICE SYSTEM

by Bill Quigley

The biggest crime in the U.S. criminal justice system is that it is a race-based institution where African-Americans are directly targeted and punished in a much more aggressive way than white people.

Saying the US criminal system is racist may be politically controversial in some circles. But the facts are overwhelming. No real debate about that. Below I set out numerous examples of these facts.

The question is—are these facts the mistakes of an otherwise good system, or are they evidence that the racist criminal justice system is working exactly as intended? Is the US criminal justice system operated to marginalize and control millions of Black Americans?

Information on race is available for each step of the criminal justice system—from the use of drugs, police stops, arrests, getting out on bail, legal representation, jury selection, trial, sentencing, prison, parole and freedom. Look what these facts show.

**One.** The US has seen a surge in arrests and putting people in jail over the last four decades. Most of the reason is the war on drugs. Yet whites and Blacks engage in drug offenses, possession and sales, at roughly comparable rates—according to a report on race and drug enforcement published by Human Rights Watch in May 2008. While Black Americans comprise 13% of the US population and 14% of monthly drug users they are 37% of the people arrested for drug offenses—according to 2009 Congressional testimony by Marc Mauer of The Sentencing Project.

**Two.** The police stop Blacks and Latinos at rates that are much higher than whites. In New York City, where people of color make up about half of the population, 80% of the NYPD stops were of Blacks and Latinos. When whites were stopped, only 8% were frisked. When Blacks and Latinos are stopped 85% were frisked according to information provided by the NYPD. The same is true most other places as well. In a California study, the ACLU found Blacks are three times more likely to be stopped than whites.

**Three.** Since 1970, drug arrests have skyrocketed rising from 320,000 to close to 1.6 million according to the Bureau of Justice Statistics of the U.S. Department of Justice. Black people are arrested for drug offenses at rates 2 to 11 times higher than the rate for white people—according to a May 2009 report on disparity in drug arrests by Human Rights Watch.

**Four.** Once arrested, Blacks are more likely to remain in prison awaiting trial than whites. For example, the New York state division of criminal justice did a 1995 review of disparities in processing felony arrests and found that in some parts of New York Blacks are 33% more likely to be detained awaiting felony trials than whites facing felony trials.

**Five.** Once arrested, 80% of the people in the criminal justice system get a public defender for their lawyer. Race plays a big role here as well. Stop in any urban courtroom and look at the racial-ethnic backgrounds of the people who are waiting for public defenders. Despite often



heroic efforts by public defenders the system gives them much more work and much less money than the prosecution. The American Bar Association, not a radical bunch, reviewed the US public defender system in 2004 and concluded “All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring . . . The fundamental right to a lawyer that America assumes applies to everyone accused of criminal conduct effectively does not exist in practice for countless people across the US.”

**Six.** Black people are frequently illegally excluded from criminal jury service according to a June 2010 study released by the Equal Justice Initiative. For example in Houston County, Alabama, 8 out of 10 Black Americans qualified for jury service have been struck by prosecutors from serving on death penalty cases.

**Seven.** Trials are rare. Only 3 to 5 percent of criminal cases go to trial—the rest are plea bargained. Most Black defendants never get a trial. Most plea bargains consist of the promise of a longer sentence if a person exercises their constitutional right to trial. As a result, people caught up in the system, as the American Bar Association points out, plead guilty even when innocent. Why? As one young man told me recently, “Who wouldn’t rather do three years for a crime they didn’t commit than risk twenty-five years for a crime they didn’t do?”

**Eight.** The U.S. Sentencing Commission reported in March 2010 that in the federal system Black offenders receive sentences that are 10% longer than white offenders for the same crimes. Marc Mauer of the Sentencing Project reports Black people are 21% more likely to receive mandatory minimum sentences than white defendants and 20% more like to be sentenced to prison than white drug defendants.

**Nine.** The longer the sentence, the more likely it is that non-white people will be the ones getting it. A July 2009 report by the Sentencing Project found that two thirds of the people in the US with life sentences are non-white. In New York, it is 83%.

**Ten.** As a result, Black people, who are 13% of the population and 14% of drug users, are not only 37% of the people arrested for drugs but 56% of the people in state prisons for drug offenses. (Marc Mauer May 2009 Congressional Testimony for The Sentencing Project)

**Eleven.** The US Bureau of Justice Statistics concludes that the chance of a Black male born in 2001 of going to jail is 32% or 1 in three. Latino males have a 17% chance and white males have a 6% chance. Thus Black boys are five times and Latino boys nearly three times as likely as white boys to go to jail.

**Twelve.** So, while Black American juvenile youth is but 16% of the population, they are 28% of juvenile arrests, 37% of the youth in juvenile jails and 58% of the youth sent to adult prisons. (2009 Criminal Justice Primer, The Sentencing Project)

**Thirteen.** Remember that the US leads the world in putting our own people into jail and prison. The *New York Times* reported in 2008 that the US has five percent of the world’s population but a quarter of the world’s prisoners, over 2.3 million people behind bars, dwarfing other nations. The US rate of incarceration is five to eight times higher than other highly developed countries and Black males are the largest percentage of inmates according to ABC News.

**Fourteen.** Even when released from prison, race continues to dominate. A study by Professor Devah Pager of the University of Wisconsin found that 17% of white job applicants with criminal records received call backs from employers while only 5% of Black job applicants with criminal records received call backs. Race is so prominent in that study that whites with criminal records actually received better treatment than Blacks without criminal records!

So, what conclusions do these facts lead to? The criminal justice system, from start to finish, is seriously racist.

### Discussion Questions

1. Have recent events involving videos of unarmed or lightly armed racial-ethnic minority group members being shot by the police changed your mind about whether there are racist elements in the criminal justice system?
2. If so, what are the biggest challenges to changing that system?

Note: Bill Quigley is legal director for the Center for Constitutional Rights and a law professor at Loyola University New Orleans College of Law. This excerpt was taken from an article he wrote for the *Huffington Post* (Quigley, 2011). Reprinted with permission.



## Native Americans

Native Americans are another group of people who have been victims of racism in this country. Note the terms *Native American* and *American Indian* are both used to describe the peoples who were here when Christopher Columbus “landed” in 1492 (Columbus’ ships actually stopped off the coast of islands in the Bahamas, and he never set foot in North America). Columbus mistakenly thought he was in India and thus dubbed the native peoples “Indians.” The name stuck, giving rise to the more recent use of the name *Native Americans* by those not wishing to associate these native peoples with Columbus. The problem is that sometimes people who are not American Indians have adopted the term *Native American* because they were born in the United States. However, both names are used by natives and nonnatives, and they will be used interchangeably in this book (Mann, 2006).

At the time of the arrival of the first of Columbus’s ships, there were reportedly as many as 20 million native people residing in North America (Colbert, 1997; Davis, 2008; Diamond, 1997; Mann, 2006). Emerging archaeological evidence has established that complex cities and agriculture flourished in the Americas, particularly in South and Central America, thousands of years before this wave of Europeans arrived. (There are theories and some evidence that Africans, other Europeans, and Asians all made trips to the Americas numerous times over the millennia and well before this latter foray by the Spaniards and Columbus [see Awes & Awes, 2010; Mann, 2006].) Within a few short decades, those populations had been decimated by disease (smallpox mostly), wars, and massacres. Over the course of a few hundred years, only a small percentage of those original peoples survived, and they were overwhelmed by the influx of European immigrants who through wars and treaties relocated Native Americans, often forcibly, off their lands and onto reservations.

Such reservations, at least initially, were in essence forms of correctional institutions intended to incarcerate a whole people on a piece of land by restricting their movement away from the reservation. This land was usually less desirable than the land the tribe originally resided on and often inadequate to support the survival of that tribe. As a consequence, Native American reservations of the 1800s and 1900s were populated by poor, underfed, and undereducated peoples with few prospects for regaining their land, wealth, or way of life (Blalock, 1967; Kitano, 1997; Stannard, 1992). Federal policy regarding Native American tribes has shifted over time from efforts to segregate them from White communities, to efforts to integrate tribal members into the larger society, to more current efforts to respect their identity and cultures.

As a result of this complicated history, the interplay of tribal, federal, and state laws is complex and depends on the time period and the state and tribe involved. Currently, there are 567 federally recognized tribes in the United States, and there are a number of tribes that have not received or sought this recognition (Bureau of Indian Affairs, 2018). On large reservations, more minor criminal offending by tribal members falls under the jurisdiction of that tribe, while felony offenses or off-the-reservation criminal activity by tribal members might be handled by the tribe, the state, or the federal government. Larger reservations maintain their own jails for tribal members accused of crimes, for minor offenders, and for those with shorter sentences for incarceration. Despite the existence of these separate legal and correctional systems on larger reservations, at least regarding less serious offending, the number of Native Americans in federal and state prisons is often disproportionate to their representation in the larger population of that state (Perry, 2004).

As reported in a recent Bureau of Justice Statistics (BJS) publication regarding Native American jails (Minton & Cowhig, 2017, p. 1), there were 80 jails on Native American reservations in 2016, and the number of inmates confined in those jails has been increasing. The incarceration rate for Native Americans and Alaska Natives in jails (recent numbers for prisons was unavailable) was 401 per 100,000, or more than 2 times the White rate of 187 per 100,000 (Zeng, 2020, p. 4).

## Hispanics, or Latinx

As mentioned previously, the term *Hispanic* is used to designate an ethnic group that spans many races and nations of origin to the point where it may not be descriptive (Martinez, 2004). For this reason, other terms are often used to describe Hispanics that may better represent who they are, such as the more general *Latinx* (which has been used instead of *Hispanic*, is a more gender-neutral and gender-inclusive term than *Latino*, and locates this ethnicity more in Latin America), or national heritage-specific terms, such as *Mexican Americans*, *Puerto Rican Americans*, and *Cuban Americans*. Each of these groups of people has a history with a distinct American experience. Sometimes that history has included discrimination by criminal justice actors during incarceration.

The history of Mexican Americans, the largest subgroup of Latinx people in the United States, has been one in which they and their land were forcibly made part of the American Southwest. As a result of the Mexican–American War, which lasted from 1846 to 1848, Mexico lost almost half of its land—the area that has become the American Southwest—from Texas to California and all of the states in between (Espinosa, Komatsu, & Martin, 1998).

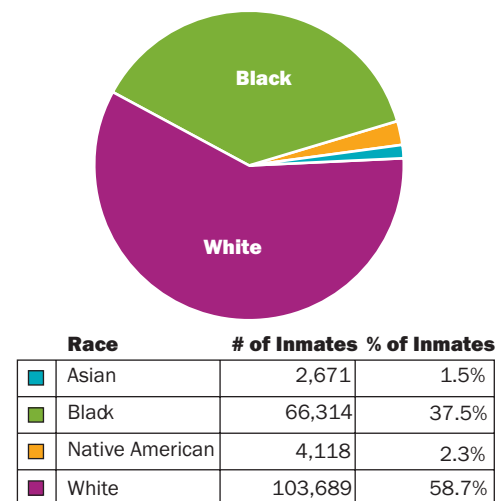
In border states (e.g., New Mexico, Arizona, and parts of Texas, California, and Florida) today, the numbers of Mexican Americans and Cuban Americans are so high and their assimilation into the culture so thorough that the existence of a clear racial or ethnic majority group has disappeared or has become the Latinx group itself. The increased number of Mexican Americans in these states and the immigrants crossing over the southern border into the United States from South and Central America have sparked a political debate over immigrants and whether they should be accorded citizenship rights. At the center of the debate are an immigration law in the state of Arizona that allows law enforcement there to demand papers from any person whom they *suspect* might be in the country illegally, without further cause (Archibold, 2010; National Conference of State Legislatures, 2012) and the efforts by the Trump administration to build a wall on the southern border with Mexico and to prevent those seeking asylum from South and Central American countries from either reaching or crossing that border. Civil libertarians and civil rights groups allege that these actions have resulted in discrimination against Hispanics in Arizona and mistreatment of adults and children held in immigration detention facilities and created the potential to fill jails, if not prisons, in a number of states (Freedom for Immigrants, 2018, p. 1). According to an immigrant advocacy group, Freedom for Immigrants, a number of states not on the border hold immigrants, and the three top countries immigrants hail from are Mexico, El Salvador, and Honduras (in that order). Whether in Arizona or in other states, however, and as with Native Americans and Black Americans, the representation of Latinx people in American prisons and jails has been disproportionate to their representation in the general population (see Figures 11.1 and 11.2). In recent years, however, and perhaps as a result of the efforts to prevent immigration by Central and South Americans, the number of incarcerated Latinx people has been decreasing (see the earlier discussion in this chapter of this topic).

The number of Latinx adults in jails and prisons has generally been decreasing, though perhaps not

**FIGURE 11.1** Number of Inmates by Race or Ethnicity, 2019

Source: Adapted from the BJS and the U.S. Census Bureau.

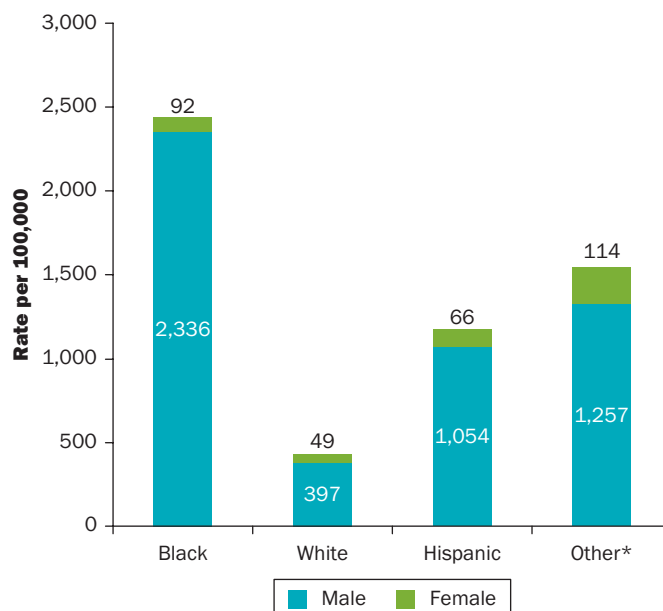
\*Includes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.



**FIGURE 11.2** Rate of Imprisonment by Race or Ethnicity, 2017

Sources: Based on data from the BJS and the U.S. Census Bureau. Most recent data available upon publication.

\*Includes American Indians and Alaska Natives; Asians, Native Hawaiians, and other Pacific Islanders; and persons of two or more races.



as much or as steadily as it has for Black people. The jail incarceration rate for Latinx people was down by 34% from 2008 to 2018 and at 182 per 100,000 is less than the current rate for white people of 187 per 100,000 (Zeng, 2020, p. 4). There was virtually no change, however, in the number of Latinx adults sentenced to prison from 2008 to 2018, even as the numbers of White and Black people decreased by 13.9% and 21.5%, respectively (Carson, 2020, pp. 6, 9); however, their rate of incarceration did decrease by 21% (perhaps as a result of the growth in the number of Hispanics in the free population) (Carson, 2020, p. 1). As far as their representation among probation and parole populations, Hispanics went from 21% to 15% of parole populations from 2000 to 2016 but increased their percentage representation among probationers during that same time period from 13% to 14% (Kaeble, 2018, pp. 17, 24).

### Asian Americans

As with most immigrants to America in the 1800s and 1900s, Japanese and Chinese immigrants (who collectively represent the largest groupings of Asian Americans, although certainly not the only ones—space prevents us from sufficiently exploring the Korean, Cambodian, Vietnamese, Laotian, Pacific Islander, and East Asian experiences, for example) were looking for a better life for themselves and their families. Although they found such a life to varying degrees, their experience, like those of the other ethnic and racial minorities mentioned in this section, were tinged with racism. Originally settling primarily in western states in the 1800s and early 1900s, Chinese and Japanese immigrants were heavily involved in mining and agriculture in pioneer communities.

Chinese labor was crucial to the construction of the first transcontinental railroad (1863–1869). Later barred from owning property in some states and from voting in others, the Chinese made do by engaging in service professions (e.g., laundries, restaurants, herb shops) and settling together in parts of cities for both comfort and safety (Lennon, Angier, Tsui, & Cheng, 2003; Wei, 1999). When economies soured in some of those cities or states, Asian immigrants were blamed for taking jobs from poor white people—much as Black people were blamed by poor white people in the South after the Civil War, or recent Mexican



## Policy and Research

### DOCUMENTED LYNCHINGS OF MEXICAN AMERICANS

*Lynching in America: Confronting the Legacy of Racial Terror*, a publication of the Equal Justice Initiative (2015), details an investigation into lynching in the South after the Civil War and up to World War II. There were 3,959 lynchings in southern states during this time period (1877–1950) (p. 1). According to the authors of this publication, the lynchings were public events, widely attended by White people, tolerated by state and local officials, and “used to enforce racial subordination and segregation” (p. 1). “Crimes” might include “bumping into a white person, or wearing their military uniforms after World War I, or not using the appropriate title when addressing a white person” (p. 1).

In a 2015 *New York Times* editorial, William D. Carrigan and Clive Webb described a little-known dirty American secret (derived from the same publication): “Blacks weren’t the only victims of violence by white mobs” (p. A23). Although Blacks were the most likely targets of lynching in America’s past, particularly in the South, the

authors note that Mexicans and, to a lesser extent, Native Americans, Italians, and Chinese were also singled out in other parts of the country. From seven Mexican shepherds hanged by White vigilantes near Corpus Christi, Texas, in 1878; to 547 newspaper-documented cases of lynchings of Mexicans and Mexican Americans in Arizona, California, New Mexico, and Texas from 1848 to 1928; to thousands killed by Texas Rangers and other law enforcement and vigilantes along the Mexican border from 1915 to 1918, the practice was reportedly widespread in the southwestern United States.

#### Discussion Questions

1. What do you think spurs people to lynch other people?
2. What makes the people who commit such atrocities, termed *acts of terror* by the Equal Justice Initiative, think they can get away with it?

immigrants are blamed by poor white people in the West today—and they were often run out of town. They were literally placed on ships and sent home, even though they and their families may have lived in the states for decades if not generations.

The first restrictive immigration law in the country, the Chinese Exclusion Act of 1882, was directed at reducing immigration from China (Wei, 1999). Some of the first drug laws, laws against opium dens dating from the 1870s onward, were passed because Chinese immigrants were thought to be corrupting the White population by spreading the use of the drug; such laws were ironic because opium was first introduced to China by westerners (Lennon et al., 2008).

Much like Chinese immigrants, Japanese immigrants provided cheap labor, as they were employed in the construction of railroads as well as in agriculture, restaurants, and many other businesses, primarily in the American West. In fact, when Chinese immigrants were excluded, Japanese immigrants filled the gap from the 1880s until their own immigration was also restricted in 1908. Barred from owning their own land, many Japanese Americans earned their living in the late 1800s and early 1900s by leasing land and growing beets in Oregon and Idaho, for instance. As their economic strength grew, however, they were regarded as a threat by the local White population, and there were numerous instances in which they were forcibly run off their land and out of town (Mercier, 2010). Mercier (2010) stated the following:

Despite the Issei’s [another word for the first Japanese immigrants] hard work in the early twentieth century, envy and racial discrimination led to increasing anti-Japanese attitudes on the West Coast, much as the sentiment had developed

against perceived Chinese competition. Residents of Mountain Home, Nampa, and Caldwell, Idaho, drove out Japanese workers, and white mobs near Coeur d'Alene and in Portland, Oregon threatened Japanese railroad workers. Tensions led to the so-called "Gentleman's Agreement" between the U.S. and Japan that effectively limited after 1908 the numbers of laborers that could emigrate from Japan. Instead, the two governments allowed wives and brides to join earlier male immigrants in the United States, changing the character of the immigrant community. (p. 10)

The internment of 120,000 Japanese Americans in 1942 in 10 inland concentration camps during World War II, along with the confiscation of their property, was not based on the actual threat they presented to the safety of western states—or at least no more so, say, than the threat of the German Americans who were scattered all over the United States at the time and not incarcerated (Mercier, 2010, p. 1). The internment of whole Japanese American families in prison camps was instead based on racist beliefs about who could be trusted and on ignorance regarding the allegiance that such citizens felt for this, their country.

As far as the incarceration of most Asian Americans these days goes, they tend to be underrepresented in correctional organizations in relation to their representation in the general population. It is not clear why such underrepresentation exists, but it is likely related to their tight-knit and supportive families and communities and the value those cultures have placed on education and achievement; this often results in higher incomes and education for many Japanese and Chinese American citizens (Mercier, 2010). Notably, successful integration into American society as measured by economic and educational achievements is not uniform across all Asian Americans. For example, those emigrating from war-torn Cambodia and Vietnam in the latter half of the 20th century were not always as "successful" or able to stay out of the criminal justice system and its correctional institutions.

## The Connection Between Class and Race or Ethnicity

### LO 11.3 Explain the connection between class, race or ethnicity, and crime.

Americans are often averse to recognizing the existence of a class system in the United States. In part, this dislike of class labels springs from our history of revolution, which was spurred in part by a desire to separate ourselves from the rigidity of the class system in England and Europe. Also, our economic, political, and social systems have allowed people in lower classes to advance through ingenuity, education, or drive, or some mix of those, to the middle or upper classes. However, this upward mobility is hampered in any number of ways by poverty and related ills such as poor nutrition and schools, limited access to health care, and parents who are absent or neglectful. When poverty is combined with long-term and systematic discrimination against a people such that their families are destroyed, as occurred with the social institution of slavery and still occurs with the continued discrimination against Black people, recovery of communities can take generations. Not surprisingly, illegal drug use catches on in such poor communities, as do other forms of involvement in street criminality.

Certain racial and ethnic minorities are more likely to be poor and thus caught up in the criminal justice system and overrepresented in correctional institutions and programs (see Table 11.1). Race and traditions of discrimination regarding Black people have stymied their ability to assimilate. Language barriers and discrimination regarding race have also prevented some Latinx Americans, Native Americans, and Asian Americans from moving



to the middle and upper classes. Cultural differences have created a similar barrier for these groups. The drug war, which is discussed more fully in this chapter, has tended to target illegal drugs and their use and has had a disparate impact on minority groups such as Latinxs and Black people. The drug war has led to the phenomenon of disproportionate representation by these minority groups in correctional organizations. As the laws and practices of the drug war are easing, however, we have begun to see a reduction in the numbers of minority group members incarcerated in jails and prisons; as was discussed in the preceding sections, this is particularly true for Black people.

## People of Color: Policies and Practices That Have Resulted in Increased Incarceration

**LO 11.4** Examine why the criminal justice system has not been race neutral in its treatment of people of color.

As has been mentioned in this chapter and in many others in this book, African Americans and Hispanics particularly, but also Native Americans, are disproportionately represented as the accused or convicted in jails, prisons, and community corrections in the United States. Asian Americans are overrepresented in federal prisons. As was already mentioned, most of these minority groups are also overrepresented among people living in poverty in the United States and among those accused or convicted of street crimes (see Table 11.1). In the 1950s, an estimated 70% of the inmates in America's prisoners were White, but by 2017, about 56% of inmates in prisons were African American (33%) or Hispanic or Latinx (23%) (Bronson & Carson, 2019, p. 6). Yet according to the U.S. Census Bureau (2017, p. 1), only 13% of the population as a whole was Black or African American, and 17% was Hispanic or Latinx of any race, whereas 73% was White (with other races constituting the remainder). Stated another way, among the largest racial and ethnic groups in 2017, there remained disproportionality in the use of corrections for Black Americans and Latinx Americans.

### The Drug War: The New Jim Crow?

The rhetoric for the modern drug war was initiated by President Richard Nixon. He ran for president on a hardline law enforcement platform and consequently was interested in implementing “tough on crime” policies and practices. His efforts, however, were stymied by the fact that law enforcement was (and still is) primarily a responsibility of the states and their counties and cities. Ronald Reagan was the next president interested in enlarging the reach of the federal government into the states' business regarding law enforcement. His administration was responsible for declaring a “war on drugs” and asking Congress to allocate money for prisons and law enforcement. Therefore, President Reagan is often credited (or blamed, depending on one's perspective) for starting the modern drug war.

Riding this popular “tough on crime” rhetoric of the 1980s and 1990s, Presidents George H. W. Bush, Bill Clinton, George W. Bush, Barack Obama, and Donald Trump each continued to fund—and at times expand the reach of—the federal drug war. The practical effect of this modern war, if not the intent of its architects, has been to incarcerate an unprecedented hundreds of thousands of people of color, primarily Black people and Latinxs, who would otherwise not be incarcerated in the correctional system (Drug Policy Alliance, 2019a; Lurigio & Loose, 2008).

Michelle Alexander (2010), in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, asserted that the modern drug war has been focused on people living in poverty and people of color while ignoring the fact that most drug users and drug sellers are White. She noted that in 2004, an estimated 75% of those incarcerated for drug

TABLE 11.1 Percentage of People in Poverty in the U.S. by Different Poverty Measures, 2016

|                          | OFFICIAL            |          |                                  |          | SPM      |                                  |            |                                  |            |            |
|--------------------------|---------------------|----------|----------------------------------|----------|----------|----------------------------------|------------|----------------------------------|------------|------------|
|                          | NUMBER              |          | PERCENTAGE                       |          | NUMBER   |                                  | PERCENTAGE |                                  | DIFFERENCE |            |
|                          | NUMBER IN THOUSANDS | ESTIMATE | MARGIN OF ERROR <sup>a</sup> (±) | ESTIMATE | ESTIMATE | MARGIN OF ERROR <sup>a</sup> (±) | ESTIMATE   | MARGIN OF ERROR <sup>a</sup> (±) | NUMBER     | PERCENTAGE |
| All people               | 316,168             | 47,021   | 854                              | 14.9     | 48,390   | 868                              | 15.3       | 0.3                              | *1,369     | *0.4       |
| Sex                      |                     |          |                                  |          |          |                                  |            |                                  |            |            |
| Male                     | 154,815             | 20,883   | 441                              | 13.5     | 22,497   | 438                              | 14.5       | 0.3                              | *1,614     | *1.0       |
| Female                   | 161,353             | 26,138   | 525                              | 16.2     | 25,893   | 517                              | 16.0       | 0.3                              | -245       | -0.2       |
| Age                      |                     |          |                                  |          |          |                                  |            |                                  |            |            |
| Under 18 years           | 73,920              | 15,904   | 401                              | 21.5     | 12,360   | 369                              | 16.7       | 0.5                              | *-3,545    | *-4.8      |
| 18-64 years              | 196,254             | 26,527   | 533                              | 13.5     | 29,401   | 570                              | 15.0       | 0.3                              | *2,874     | *1.5       |
| 65 years and older       | 45,994              | 4,590    | 176                              | 10.0     | 6,629    | 223                              | 14.4       | 0.5                              | *2,039     | *4.4       |
| Type of unit             |                     |          |                                  |          |          |                                  |            |                                  |            |            |
| Married couple           | 189,603             | 13,696   | 499                              | 7.2      | 17,878   | 575                              | 9.4        | 0.3                              | *4,182     | *2.2       |
| Female householder       | 64,008              | 18,442   | 559                              | 28.8     | 18,366   | 537                              | 28.7       | 0.7                              | -76        | -0.1       |
| Male householder         | 34,075              | 6,105    | 266                              | 17.9     | 7,420    | 292                              | 21.8       | 0.7                              | *1,315     | *3.9       |
| New SPM unit             | 28,482              | 8,779    | 337                              | 30.8     | 4,726    | 305                              | 16.6       | 1.0                              | *-4,053    | *-14.2     |
| Race and Hispanic origin |                     |          |                                  |          |          |                                  |            |                                  |            |            |
| White                    | 244,468             | 31,305   | 640                              | 12.8     | 33,346   | 683                              | 13.6       | 0.3                              | *2,042     | *0.8       |
| White, not Hispanic      | 195,352             | 19,797   | 523                              | 10.1     | 20,943   | 568                              | 10.7       | 0.3                              | *1,147     | *0.6       |
| Black                    | 41,226              | 10,870   | 360                              | 26.4     | 9,662    | 346                              | 23.4       | 0.8                              | *-1,208    | *-2.9      |
| Asian                    | 17,796              | 2,142    | 209                              | 12.0     | 2,999    | 247                              | 16.8       | 1.3                              | *856       | *4.8       |
| Hispanic (any race)      | 55,614              | 13,214   | 422                              | 23.8     | 14,129   | 442                              | 25.4       | 0.8                              | *915       | *1.6       |
| Nativity                 |                     |          |                                  |          |          |                                  |            |                                  |            |            |
| Native born              | 273,984             | 39,227   | 771                              | 14.3     | 38,379   | 762                              | 14.0       | 0.3                              | *-848      | *-0.3      |
| Foreign born             | 43,822              | 42,184   | 7,795                            | 287      | 0.6      | 10,011                           | 355        | 23.7                             | 0.7        | *2,216     |
| Naturalized citizen      | 20,409              | 19,733   | 2,349                            | 146      | 0.7      | 3,467                            | 184        | 17.6                             | 0.8        | *1,118     |
| Not a citizen            | 22,451              | 5,446    | 242                              | 24.3     | 6,544    | 282                              | 29.1       | 1.0                              | *1,098     | *4.9       |

Source: U.S. Census Bureau (2016). Most recent data available.

Note: SPM = Supplemental Poverty Measure.

a. The margin of error (MOE) is a measure of an estimate's variability. The larger the MOE in relation to the size of the estimate, the less reliable the estimate. The MOE is the estimated 90% confidence interval. The MOEs shown in this table are based on standard errors calculated using replicate weights. For more information, see "Standard Errors and Their Use" at [ftp://ftp2.census.gov/library/publications/2014/demo/p60-252sa.pdf](http://ftp2.census.gov/library/publications/2014/demo/p60-252sa.pdf).

\*An asterisk preceding an estimate indicates that the change is statistically different from zero at the 90% confidence level.

offenses were Black or Latinx, while the majority of the drug users and sellers were White (p. 97). She argued the case that the drug war, as executed, has had the practical effect of reinstating Jim Crow laws in the United States. She maintained that this is so because of the police sweeps of poor and racial-ethnic minority neighborhoods, the law enforcement focus on small-time marijuana possession offenders, and the law's nonsensical emphasis on crack cocaine over powder cocaine although they are similar in addictive properties and pharmacologically the same (see the following discussion of this topic and Chapter 4 on sentencing). Moreover, the implementation of the drug war has led to the erosion of civil liberties protections regarding search and evidence.

**Jim Crow laws** were devised by southern states following the Civil War, starting in the 1870s and lasting until 1965 and the civil rights movement, to prevent Black people from fully participating in social, economic, and civic life. These laws restricted the rights and liberties of Black citizens in employment, housing, education, travel, and voting. Voter disenfranchisement, or preventing Black people from voting, was a key part of the Jim Crow laws back then (Alexander, 2010). Today, a felony offense gained through even a relatively minor drug possession conviction can mean the loss of employability, loss of access to public housing or food stamps, and voter disenfranchisement—much the same effect as the Jim Crow laws of half a century ago. In a recent article on the use of felony disenfranchisement in Georgia, which affected the 2018 governor's election, the reporter noted that almost 250,000 previously convicted felons, including as many as 144,275 African Americans, were prevented from participating in voting, even if their crimes were relatively minor (e.g., stealing or credit card fraud) and they had done their time for the offense (Bynum, 2019, p. 7).

**Jim Crow laws:** Laws devised by southern states following the Civil War, starting in the 1870s and lasting until 1965 and the civil rights movement, to prevent Black people from fully participating in social, economic, and civic life. These laws restricted the rights and liberties of Black citizens in employment, housing, education, travel, and voting. Voter disenfranchisement, or preventing Black people from voting, was a key part of the Jim Crow laws.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a Black male correctional officer in a jail, working in a living unit for inmates who are new to the facility. It is usually referred to as a *classification unit*, as inmates in it are classified to other units by their conviction status, perceived dangerousness, and programming needs. After working in the unit for a few years, you notice that there are a few other staff, though not most, who treat minority group inmates with less respect

than White inmates. You also notice that some minority group inmates are classified with a higher security ranking than similar White inmates, and this means that racial-ethnic minority inmates do not have as much access to reentry programming and to placement in the work release facility as do White inmates. What would you do to make sure that minority group inmates are treated and classified in the same way as other inmates?

## Crack Versus Powder Cocaine

The concern over crack cocaine started in the 1980s. The sentencing disparity that occurred when crack cocaine possession was treated as 100 times worse than possession of powder cocaine in federal law was tied to the race and class of the persons associated with each drug (Alexander, 2010; The Sentencing Project, 2011). Poorer and disproportionately Black and Latinx people tended to use the cheaper crack cocaine, while richer and disproportionately white people tended to use the more expensive powder cocaine. Although there was never any real evidence that crack was more harmful or addictive than powder cocaine, there were a number of news stories sensationalizing news of “crack babies” and mothers—portrayed as *Black* babies and their mothers—in the 1980s when the Reagan administration promoted

the disparate sentencing. Alexander (2010) reported that the Reagan administration used the emergence of crack as a means of justifying the drug war and its focus on poor and racial-ethnic minority people:

They hired staff whose job it was to find reports of inner-city crack users, crack dealers, crack babies, and crack whores and to feed those stories to the media. The media saturation coverage of crack was no accident. It was a deliberate campaign that fueled the race to incarcerate. Legislators began passing ever harsher mandatory-minimum sentences in response to the media frenzy. (cited in Cooper, 2011, p. 7)

The harsher sentencing for crack cocaine possession is another example of a current criminal justice policy that even the U.S. Sentencing Commission concedes has had the practical and discriminatory effect of vastly increasing the incarceration of Black people and Latinxs. Although the federal law was changed in 2010, crack cocaine sentences at the federal level are still much harsher than those for powder cocaine, by a factor of 18:1 (rather than 100:1 as they were under the 1986 law). As of 2016, about 16,000 inmates at the federal level received reductions in their sentences (U.S. Sentencing Commission, 2016, p. 1). In addition, another 26,000 inmates convicted of “trafficking crack and



## In Focus 11.3

### HARSH JUSTICE AND THE SCOTT SISTERS

In 1993, two sisters, Jamie Scott, 22, and her pregnant 19-year-old sister, Gladys, were convicted of using three teenage boys to set up the armed robbery of two men (Pitts, 2010). The Scott sisters supplied the shotgun to the teenagers. Eleven dollars was stolen during this robbery, and the victims were unharmed. For this crime, the sisters, who had no prior criminal histories, were each given a double life sentence and, as of November 2010, had served 16 years of it.

The teenage boys, two of whom testified against the sisters as part of their plea bargains, received 2-year sentences, which they completed years ago. The Scott sisters claimed and still claim that they are innocent. The mother of the sisters argues the harsh sentences were revenge for the family’s willingness to testify against a corrupt sheriff (Pitts, 2010). As news columnist Leonard Pitts (2010) explained,

Whatever the proximate cause of this ridiculous sentence, the larger cause is neon clear: The Scott sisters are black women in the poorest state in the union. And as report after report has testified, if you are poor or black (and God help you if you are both),

the American justice system has long had this terrible tendency to throw you away like garbage. Historically, this has been especially true in the South. . . . How many other Scott sisters and brothers are languishing behind bars for no good reason, doing undeserved hard time on nonexistent evidence, perjured testimony, prosecutorial misconduct or sheer racial or class bias. (p. B6)

The Scott sisters did, finally, get some relief from their sentences. Thanks to the advocacy of Pitts and others, such as the NAACP, the original prosecutor of the sisters, the governor of Mississippi, Haley Barbour, suspended the sisters’ sentences as long as Gladys donated a kidney to her sister Jamie, whose kidneys have failed (Diaz-Duran, 2010). They were released from prison in January 2010.

### Discussion Question

1. In what ways does the Scott sisters’ treatment by the criminal justice system seem similar to and different from that experienced by the Scottsboro boys?

powder cocaine, heroin, marijuana, methamphetamine, and other drugs” also received reduced sentences in 2014 as a result of the U.S. Sentencing Commission (2016, p. 1) change in the guidelines. However, some state laws still treat crack cocaine use more harshly than powder cocaine use, which results in disproportionate incarceration of minority group members for this drug offense in state prisons (Anderson, 2018, p. 1).

### Racial Profiling and Driving While Black or Brown

Scholars note that racial profiling by the police can have a similar effect to that of the drug war and its propensity for increasing racial-ethnic minority involvement as the accused or convicted in corrections. **Driving while Black or Brown (DWB)** refers to the police practice of focusing law enforcement attention on Black or Brown drivers. The research in this area has been mixed, with some researchers finding that this practice affects arrests and others unable to establish the existence of this practice (Rice, Reitzel, & Piquero, 2005). Lundman's (2010) research also raised questions about the validity of police reports on the race or ethnicity of stopped drivers, noting that there were unaccounted-for missing data on drivers from predominately poor and racial-ethnic minority neighborhoods in some research.

Police officers tend to stop older vehicles, and such cars are often owned by poorer and minority group members. Langan and colleagues found in a review of BJS data from a police and public national contact survey that Black and Latinx drivers were more likely to report being stopped by the police than were Whites (Langan, Greenfield, Smith, Durose, & Levin, 2001). They also found that minority group members were more likely to report negative criminal justice outcomes for themselves, such as being ticketed, arrested, handcuffed, searched, or subjected to the use of force by officers when stopped. Rice and colleagues (2005, p. 63) found in their study of the perceptions of 700 randomly selected young adult (aged 18–26) New Yorkers that the nuances of these stops might hinge on what shade one's skin is. They found that Black people were more likely to report that racial profiling was widespread and that they were racially profiled than were white people or non-Black Hispanics.

In a study of drug arrests in Seattle, Washington, Beckett and colleagues (Beckett, Nyrop, Pfingst, & Bowen, 2005) found that the disparity in arrests between people of color and white people can be explained by racialized justice. The drug problem there was seen as a dangerous crack problem, which in turn was seen as a problem of use by Black people and Latinx people despite comparable use of illegal drugs by Whites. More people of color were therefore stopped by the police, as they were assumed to be more involved in illegal drug use.

Of course, the more such stops one is subjected to, the more likely one is to run afoul of the law and to enter a correctional institution, such as a jail, or to find oneself on probation (Hawkins, 2005). Relatedly, these experiences are also more likely to result in the building of a record that, should one become entangled in the system again later, might be used to justify a conviction or a more severe sentence.



**Photo 11.3** Critics argue that drivers who are people of color are stopped more by the police than white drivers and that they are treated more harshly when they are stopped.

**Driving while Black or Brown (DWB):** Refers to the practice of police focusing law enforcement attention on Black or Brown drivers.



## People of Color: Adjustment to Incarceration

**LO 11.5** Discuss the special challenges faced by racial-ethnic minority group members in corrections.

Victor Hassine (2009), a writer and inmate who had been doing life since 1980 in Pennsylvania prisons for a capital offense, commented that race was and is an integral part of his prison experience. Segregation in housing and by gangs (both voluntary) and racial bias in treatment by staff were common in the Graterford Prison, where he was an inmate during the 1980s. Most of the inmates in this prison were Black, while most of the staff were White. (Notably, in the 1980s in the Graterford Prison, the only choices for self-identifying inmate race or ethnicity were White and Black.) Most of the staff in this prison identified as Christian, while a sizable proportion of the Black inmates were Muslim. In addition to these differences of race and religion were differences in place of origin: Many inmates tended to come from urban areas, while many staff were raised in more rural settings. Such differences between staff and inmates led to a difficult adjustment for racial-ethnic minority inmates (see the following discussion of racial-ethnic minority staff) and were cited as one of the complaints by inmates in the 1971 riot at the Attica Prison in New York.

Walter Rideau (2010), in his first-person account of incarceration in Louisiana prisons, described the setting for his third trial and the racial politics of the day in Baton Rouge, Louisiana, in this way:

In 1970, at the time of my third trial, the Klan was using the kind of intimidation for which it was famous. It invaded North Baton Rouge—the black part of town—and plastered the utility poles and other upright surfaces with signs showing a rearing white-hooded horse carrying a hooded white rider, his left hand holding aloft a fiery cross. Beneath the horse's feet was the Klan's motto: FOR GOD AND COUNTRY. The poster was dominated by the horse and rider and by the big, bold print in the upper left corner that read SAVE OUR LAND, and beneath the picture it read JOIN THE KLAN. (p. 61)

Rideau (2010) encountered racism from some staff and inmates over the course of his long incarceration, but he noted that it lessened in degree and frequency as the years went on. Today, the racial mix of staff is more likely to reflect that of the community where inmates

### ? Ethical Issue

WHAT WOULD YOU DO?

You are a White female counselor working in a privately owned juvenile detention facility, and you are interested in hiring a more racially and ethnically diverse staff to better match your community and clientele. Your company has an equal employment opportunity policy in place, but it has rarely been implemented in practice, as almost all of the staff are White, whereas almost all of the clients are Black or Hispanic. You are on the selection team for a new position at the facility. After several interviews, you notice that at least one other member of the team—and

possibly more—is not interested in hiring a minority group member, as this person consistently ranks such applicants' resumes and interviews lower than those of White applicants, even though you do not think they merit it. The vote on the applicants is approaching, and there are three top candidates for the job who all seem similarly qualified for it. One of those applicants is a Hispanic man, and the other applicants are White. What would you do to ensure that this vote is fair and that the best applicant for the job gets the position?

come from, which has tended to reduce race as a source of conflict between staff and inmates. However, Ross and Richards (2002) noted that a “color line” still divides prison inmates into at least these groups: Black people, white people, and Latinx people. Between and among these groups, there are different styles of living and means of surviving.

### Victimization by Race and Ethnicity

Regarding victimization in prisons, Wolff, Shi, and Blitz (2008) found that Black people were more likely to report sexual or physical violence from staff than from other inmates, non-Hispanic white people were more likely to report victimization by other inmates than by staff, and Hispanics had above-average reporting of victimization by both staff and other inmates. When both types of victimization were accounted for, however, all three groups reported about the same amount of victimization, just from different sources.

### Probation or Prison?

Some research indicates that Black offenders may prefer prison over community alternative sentencing, whereas White offenders express the opposite preference. In a study by Wood and May (2003), the authors noted that Black people and white people “differed in their willingness to participate in alternative sanctions, in their preference for prison over alternatives, and in the amount of these alternatives they were willing to serve” (p. 624), with Black people less willing to participate in alternatives or the number of alternatives and more likely to prefer prison over alternatives. There are several explanations for these differences that have been discovered by these and other researchers.



## Perspective From a Practitioner

JAMES WATKINS, CLASSIFICATION COUNSELOR

**Position:** Classification counselor

**Location:** Airway Heights Correction Center,  
Spokane, Washington

**Education:** North Idaho College and Spokane  
Community College

**What previous criminal justice  
experience do you have?**

I previously served as a correctional officer for 4.5 years, a sergeant for 1 year, and a classification counselor (2) for 4 years.

**What are your primary duties and  
responsibilities?**

- Supervise counselors on a behavior change unit.
- Work with offenders to assure correct classification levels.
- Complete offender needs assessment per RNR (risk, need, responsivity) model of offender classification.
- Facilitate program services to include mental health services, education, chemical dependency, and evidence-based programs, when available.
- Provide inmates with information about reentry and release resources.
- Engage offenders with programs to increase success upon release.
- Connect families through the facilitation of increased communication with families.
- Mentor language, role-modeling prosocial behaviors for effective communication with staff and offenders.
- Manage a caseload of adult criminal offenders whom I am responsible for counseling and

(Continued)

(Continued)

informing regarding community resources and problems they might encounter in their transition to work release, parole, or release.

- Work with internal and external entities to facilitate offender reentry into the community; enforce court ordered conditions and impose Department of Corrections conditions.
- Participate in risk management with a multidisciplinary team.
- Maintain communication with offenders to assist with attorney calls, child custody and child support hearings with Department of Social and Health Services and courts, and family contact through crisis and emergency situations.
- Arrange translator services.
- Evaluate offenders for early release.
- Regularly review and update offender plans, needs assessment, and programming prioritization.
- Make recommendations for offender program progression, earned time, and other incentives.
- Exercise sound judgment, aligned with department policy, in decisions concerning sanctions, treatment, and education referrals.

**What are the characteristics and traits most useful in your line of work?**

- Effective communication skills.
- Honesty and integrity.
- Flexibility and dependability.
- Strong time management skills.
- Stability, willingness to change, adaptability, and humor.
- Do not take things personally, and be understanding of clientele.
- Thick skinned—withstand more than the average individual.
- A superior mind-set.
- Understand that clients and staff are a diverse group of individuals and that inmates and staff come from huge variety of social and economic backgrounds.

- Ability to accept individuals' beliefs that are far from your own and still be able to deal with those individuals.
- Be levelheaded, not reactionary.
- Develop an ability to stand alone, stand on your morals and beliefs, and be very independent.
- Have positive avenues of relief outside the job environment.
- Ability to deal with difficult situations appropriately.
- Be more rooted and grounded in who you are to overcome perceptions of others' beliefs about who you are.
- Ability to take the higher ground—as a minority, you have to show it more than others.
- Be independent because of the cultural perception of how you treat offenders within your same culture and race; you are under the spotlight more.
- Overcome the perception of giving preferential treatment to the same culture, race, and minority. That stereotype is always in the back of your mind—how others perceive your treatment of a minority and offenders of the same race.
- Do not compromise the self, and act even more professional. Coming from the Spokane area and becoming a part of the criminal justice system while living in the same community and having to withstand scrutiny and stereotyping, I had to maintain values, integrity, and goals regardless of my culture or race.
- Ability to deal with direct and indirect prejudicial statements from staff and references toward race, politics, community, and family.
- Ability to deal professionally and maturely with the assumptions, stereotypes, and direct racism and indirect racist undertones.

**Please describe a typical workday.**

- Come to work and check mail messages and calendar for the day.
- Return phone calls and e-mails from Department of Corrections staff, offender families, offenders, criminal justice system attorneys, and judges.

- Check with custody and classification staff passed down from previous shifts that concern any information pertaining to safety and security of unit staff offenders.
- Check list for classification case management issues and offender reviews and release dates.
- EBC and unit responsibilities include program schedules, class facilitation, and specific unit and prison meetings.
- Meet with offenders; attend to classification issues, reentry/release, and security release; address offender jobs and programming.
- Deal with insubordinate staff and offenders.
- Maintain safety and security of unit in collaboration with unit supervisor.
- You have to be very aware of the clientele with whom you are dealing on a day-to-day basis on both sides of the spectrum—that is, both the staff and the offenders.
- You need to be aware of how you will be perceived: Go against the stereotype.
- You need to be aware of the stereotypes—for example, how you dress “like a gang member” versus going golfing; wearing identical clothes but being perceived differently; and how you conduct yourself at work and away from work. Stereotypical perceptions include that one is uneducated, is athletic, has low writing and language skills, or has an STG (security threat group, or gang) affiliation.
- Prove that you are above the stereotypes; you may have to be patient. You want people to judge you on work performance, not by your race and culture.

**What is your advice to someone who wants to enter your field?**

- Make sure to understand who you are. This is a job you want to perform well, but it isn’t your life.
- Be prepared every day.
- Be very aware of who you are going to work for and what the job responsibilities are.
- Unfortunately, the bigger burden is that how you conduct yourself influences others’ perspectives of Black people.
- Always take the high road. Fair isn’t an option. You cannot think about what fair is or should be. You just have to follow your values, integrity, and beliefs and take the high road at all times.
- Have a “superior mind-set”—Professor Jigoro Kano, founder of judo.

Crouch (1993) argued that Black people might be more able to accept prison and adjust to it over alternatives because they are more likely to find people they know housed there and are less likely to be threatened by prison life than white people given that they have suffered the violence and deprivations of the cities already. Wood and May (2003) added that it is possible that Black people may also prefer prison because the alternatives to it in the community may subject them to abuse and harassment and ultimate revocation of their probation anyway. Therefore, it is not likely true that Black people or white people “prefer” prisons or the alternatives (e.g., probation or other programming); they just disagree about which is the lesser evil.

## People of Color Working in Corrections

**LO 11.6** State the statistics related to employment of people of color in the correctional system.

As with women generally, the employment of people of color in correctional organizations did not increase until the Civil Rights Act of 1964 was passed and affirmative action plans were developed to encourage such employment. Today, however, the number of people of color employed in corrections, although not always reflective of their representation in the



**Photo 11.4** An inmate being cuffed by an officer. Inmates in transit between institutions or who present a danger to staff are cuffed before they are removed from cells.

community (particularly regarding women of color), has increased substantially. Although data in this area are not always consistent or up to date, we do know from the *Sourcebook of Criminal Justice Statistics* (Pastore & Maguire, 2000, Table 1.104; Pastore & Maguire, 2003, Table 1.101; Pastore & Maguire, 2004, Table 1.107) that Black non-Hispanics in 1999 accounted for 23.7% of local jail correctional officer employees (when their representation in the general population was at about 12.2%, according to the U.S. Census Bureau for 2001), 19.5% of all employees in state and federal and private prisons in 2004, and 24.3% of correctional officers in federal prisons in 2004 (Pastor & Maguire, 2005). On the other hand, non-Hispanic white people and non-White Hispanics are underrepresented

among staff when compared with their representation in those communities. In 2001, white people constituted about 69.0% of the U.S. population and Hispanics about 12.9% (U.S. Census Bureau, 2001). In these same data, white people were still the majority racial group employed (59.3%, 63.3%, and 60.6%, respectively) in these jails and prisons, and Hispanics constituted a substantial ethnic minority (7.7%, 7.3%, and 12.4%, respectively).

## SUMMARY

**LO 11.1** Define the terms *race*, *ethnicity*, *disparity*, and *discrimination*.

- *Race* refers to the skin color and features of a group of people on the basis of biology, while *ethnicity* refers to the differences among groups of people on the basis of culture. *Disparity* occurs when one group is treated differently and unfairly by governmental actors compared with other groups, while *discrimination* occurs when people or groups are treated differently because of who they are rather than their abilities or something they did.

**LO 11.2** State some of the history of racial-ethnic minority group members in this country.

- American history includes a racist past that has affected the operation of correctional entities and the criminal justice system generally.

**LO 11.3** Explain the connection between class, race or ethnicity, and crime.

- Those who fall below the poverty line in the United States are also more likely to be enmeshed in street criminality. Some racial and ethnic groups that are more likely to be poor (e.g., Black people and Latinx people) are also more likely to be engaged in street crime.

**LO 11.4** Examine why the criminal justice system has not been race neutral in its treatment of people of color.

- Police, courts, and correctional practices have had the effect of increasing the disproportionate incarceration of minority group members. DWB, the drug war generally, and the harsh sentencing for crack cocaine specifically, along with the disenfranchisement that comes with a felony conviction (and in some states stays with a felony conviction), all serve to reinforce disparity



in treatment by the criminal justice system of racial and ethnic minorities.

**LO 11.5** Discuss the special challenges faced by racial-ethnic minority group members in corrections.

- Physical and sexual victimization in prisons varies by type of victimization and by race and ethnicity, although the total amount of such victimization appears to be similar for all racial and ethnic groups.

**LO 11.6** State the statistics related to employment of people of color in the correctional system.

- The number of racial and ethnic minorities working in corrections has increased substantially over the years, and for Black people at least, it appears that they mirror their numbers in the community.

## KEY TERMS

Discrimination 271  
Disparity 271

Driving while Black or Brown  
(DWB) 285  
Ethnicity 271

Jim Crow laws 283  
Race 270

## DISCUSSION QUESTIONS

1. What sorts of criteria differentiate race and ethnicity? Why might it not always be clear what race or ethnicity a person is? Are there reasons to make such distinctions?
2. What evidence is there of disparity and discrimination against racial and ethnic minorities in the United States in the past?
3. What evidence is there of disparity and discrimination against racial and ethnic minorities in the United States currently?
4. How and why is adjustment in corrections affected by one's race or ethnicity?
5. Discuss how we might reduce the amount of disparity and discrimination against people of color in the United States. What specific steps can be taken in this direction? What are the likely barriers to accomplishing these changes?



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# 12

## Juveniles and Corrections

### TEST YOUR KNOWLEDGE

Test your current knowledge of juvenile delinquency and juvenile corrections by answering the following questions as true or false. Check your answers on pages 388–389 after reading the chapter.

1. Juveniles commit a disproportionate number of criminal acts.
2. Juvenile antisocial behavior is normal in that most adolescents engage in it.
3. Special juvenile courts began in England.
4. The ultimate source of responsibility for a juvenile's behavior is the state.
5. Juveniles can be tried in adult courts and sent to adult prisons in some circumstances.
6. Juveniles have always enjoyed the same rights as adults in criminal courts.
7. Juveniles can be sentenced to life without parole for any offense.
8. It was never permissible in the United States to execute those who committed murder while they were juveniles.

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 12.1** Define delinquency and status offenses.
- 12.2** Explain why we see the age–crime curve in terms of adolescent development.
- 12.3** Discuss the history and philosophy of juvenile justice.
- 12.4** State the court cases that led to extending due process to juvenile offenders.
- 12.5** Describe the practices related to community and institutional juvenile corrections.
- 12.6** Explain the processes involved in restorative justice.
- 12.7** State the criteria for sending juveniles to institutions and the operating principles of those institutions.

### TOO YOUNG FOR LIFE

Joe Harris Sullivan was a 13-year-old tearaway when he and two other boys broke into the home of a 72-year-old woman in Pensacola, Florida, and stole jewelry and coins. One of the boys returned later and beat and raped her. Sullivan was convicted of the rape on the testimony of the other two boys (who received light sentences) and was sentenced to life without parole (LWOP). Sullivan's presentence report showed that he had committed 17 offenses (some serious, some not) prior to the burglary and rape. He was a troublemaker while in juvenile detention for previous offenses and assaulted other juveniles. Under Florida's sentencing guidelines, Sullivan scored 263 points above the minimum required to impose a life sentence.

In July 2003, 16-year-old Terrance Jamar Graham and two accomplices attempted to rob a restaurant in Jacksonville, Florida. Graham was charged as an adult and placed on probation after he pleaded guilty. In December 2003, Graham was arrested for a number of home invasion robberies and sentenced to LWOP for the robbery and probation violation when he was 17.

In both the Sullivan and Graham cases, the sentencing judges made certain remarks indicating that they were certain the boys were beyond hope of rehabilitation. Both boys were raised in abusive and neglectful homes (Graham's parents were both crack addicts) and lived

*(Continued)*

(Continued)

in the worst ghettos of their respective cities. While these circumstances cannot excuse their behavior, they make it understandable. In appealing these boys' cases, their attorneys made much of neuroscience evidence relative to the immaturity of the adolescent brain. We all know that adolescence is a time of rebellion, but most of us limit that revolt to being a little experimental with our lives and being—from a parental point of view—a pain in the rear.

We will see, however, that there is a small subset of people who begin committing antisocial acts prior to adolescence and continue to do so over the life course. Is LWOP the only solution to such predators, or can their deficiencies be addressed and the community be protected in some other way? Should Sullivan and Graham have been sentenced in adult court anyway? Are individuals who commit rapes and armed robberies “children” as we think of them, and should they be treated differently from adults? These are some of the things to think about as you read about the differences between the adult and juvenile justice systems in the United States.

## Introduction: Delinquency and Status Offending

### LO 12.1 Define delinquency and status offenses.

The juvenile justice system generally falls under the broad umbrella of civil law rather than criminal law. This placement emphasizes the distinction the law makes between adults and juveniles who commit the same illegal acts. Juveniles who commit acts that are criminal when committed by adults are called **delinquents** rather than criminals, conveying the notion that the juvenile has *not* done something they *were* supposed to do (behave lawfully) rather than *done* something they *were not* supposed to do (behave unlawfully). This difference is a subtle one that reflects the rehabilitative, rather than punitive, philosophy of American juvenile justice.

Juveniles are subject to laws that make certain actions that are legal for adults, such as smoking, drinking, not obeying parents, staying out at night to all hours, and not going to school, illegal for them. These acts are called **status offenses** because they apply only to individuals having the status of a juvenile, and they exist because the law assumes that juveniles lack the maturity to appreciate the long-term consequences of their behavior. Many of these acts can jeopardize juveniles' future acquisition of suitable social roles because they may lead to defiance of all authority, inadequate education, addiction, and teenage parenthood (Binder, Geis, & Bruce, 2001). If parents are unwilling or unable to shield their children from harm, the juvenile justice system becomes a substitute parent. Status offenses constitute the vast majority of juvenile offenses and consume an inordinate amount of juvenile court time and resources (Bynum & Thompson, 1999). Because of this, some states have relinquished court jurisdiction over status offenses to other social service agencies, where terms such as “child in need of supervision” (CHINS) and “person in need of supervision” (PINS) are used to differentiate **status offenders** from juveniles who have committed acts that are crimes when committed by adults. In this chapter, we discuss the extent of juvenile delinquency and status offending, their likely causes, the history of dealing with children in corrections, and current processing of delinquents in the system.

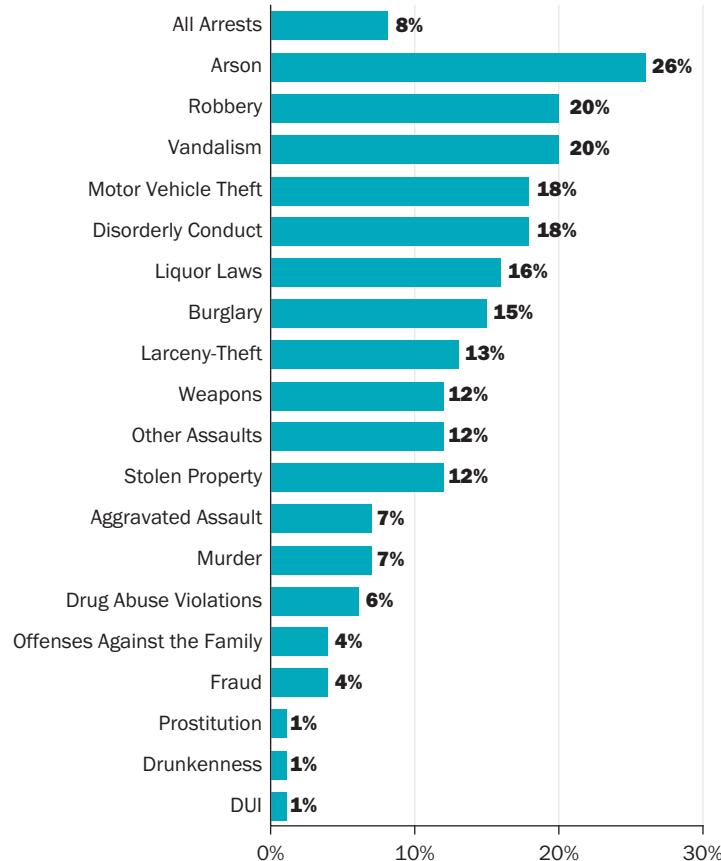
**Delinquents:** Juveniles who commit acts that are criminal when committed by adults.

**Status offenses:** Offenses that apply only to juveniles, such as smoking and disobeying parents.

**Status offenders:** Juveniles who commit certain actions that are legal for adults but not for children, such as smoking and not obeying parents.

## The Extent of Delinquency

According to the 2010 U.S. census (Howden & Meyer, 2011), the percentage of the population between the age of responsibility (the age at which juveniles can be held responsible for their



**FIGURE 12.1** Juvenile Proportion of Arrests by Offense, 2016

Source: Office of Juvenile Justice and Delinquency Prevention (2017).

Note: The most recent data available upon publication are shown. The Violent Crime Index includes the offenses of murder and nonnegligent manslaughter, rape, robbery, and aggravated assault. The Property Crime Index includes the offenses of burglary, larceny-theft, motor vehicle theft, and arson. Running away from home and curfew and loitering violations are not presented in this figure because, by definition, only juveniles can be arrested for these offenses.

actions) and the age of adulthood, averaged across all states, was about 15.5% in 2010. From Figure 12.1 we see that juveniles commit 8% of all crimes. They are thus underrepresented in crimes overall but overrepresented for crimes from arson (28%) to liquor laws (16%).

Figures such as these are troubling, but antisocial behavior is normative (although not welcome) for juveniles; juveniles who do *not* engage in it are statistically abnormal (Moffitt & Walsh, 2003). Adolescence is a time when youths are “feeling their oats” and temporarily fracturing parental bonds in their own personal declaration of independence. Looking at data from 12 different countries, Junger-Tas (1996) concluded that delinquent behavior is a part of growing up, and the peak ages for different types of crimes were similar across all countries (16–17 for property crimes and 18–20 for violent crimes). Biologists tell us that adolescent rebellion is an evolutionary design feature of all social primates. Fighting with parents and seeking out age peers with whom to affiliate “all help the adolescent away from the home territory” (Powell, 2006, p. 867). As Caspi and Moffitt (1995) put it, “Every curfew broken, car stolen, joint smoked, or baby conceived is a statement of independence” (p. 500). The juvenile courts are thus dealing with individuals at a time in their lives when they are most susceptible to antisocial behavior.

## The Juvenile Brain and Juvenile Behavior

**LO 12.2** Explain why we see the age-crime curve in terms of adolescent development.

Figure 12.2 shows prevalence rates for criminal behavior over the life course from different times and different countries. This pattern is known as the **age-crime curve**. The age-crime

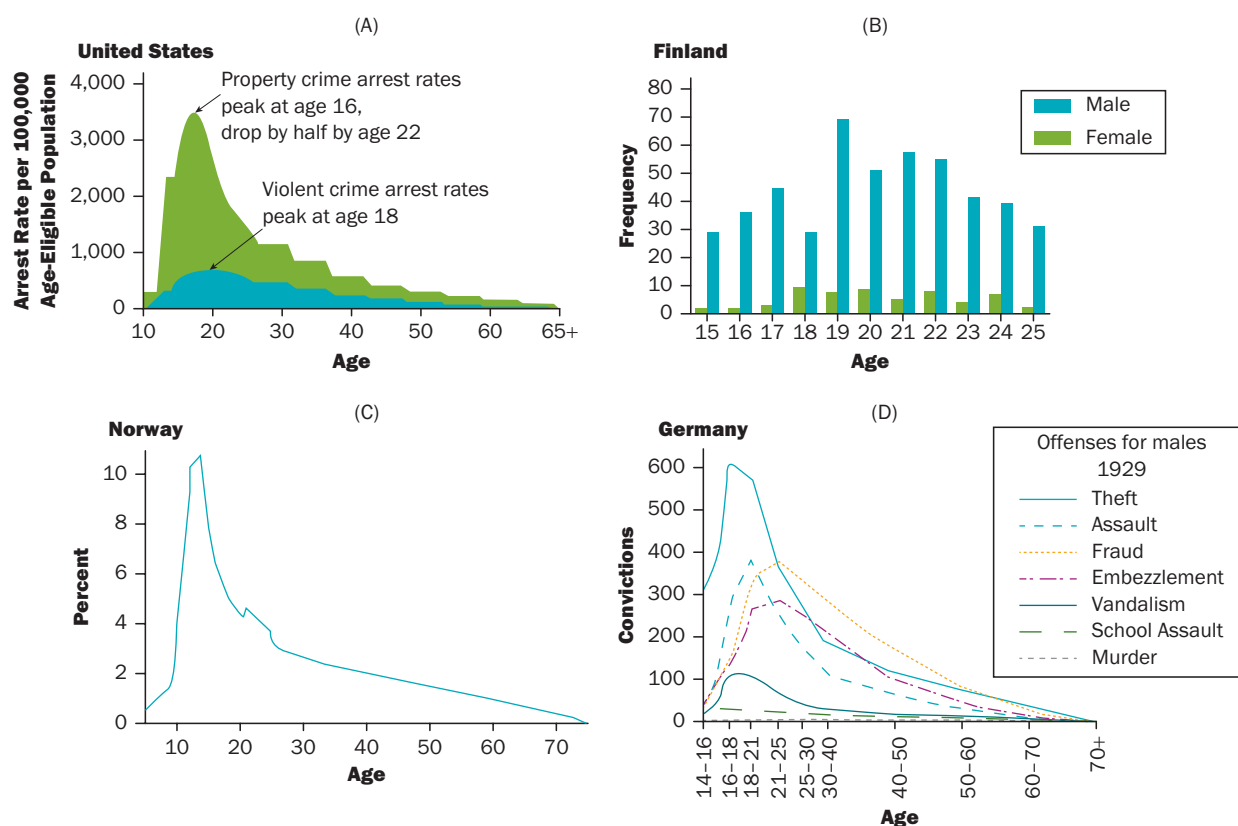
**Age-crime curve:** Formed from the statistical count of the number of known crimes committed in a population over a given period mapped according to age.



curve is formed from the statistical count of the number of known crimes committed in a population over a given period mapped according to age. The curve reflects a sharp increase in offending beginning during early adolescence, a peak during midadolescence, and then a steep decline during early adulthood followed by a steadier decline thereafter. The peak may be higher or lower at different periods, and the peak age may vary by 1 or 2 years at different times or in different places, but the peak remains. This pattern has been noted throughout history of all cultures around the world and has been called “the most important regularity in criminology” (Nagin & Land, 1993, p. 330) and a “law of nature” (Gottfredson & Hirschi, 1990, p. 124).

■ **FIGURE 12.2** Illustrating the Age–Crime Curve in Different Countries and Times

Source: Ellis and Walsh (2000). Reprinted with permission.



The age–crime curve has long puzzled criminologists. Hirschi and Gottfredson (1983) noted, “The age distribution of crime cannot be accounted for by any variable or combination of variables currently available to criminology” (p. 554). However, with the tremendous advances made by the neurosciences over the past three decades, we are in a much better position to understand adolescent offending. Neuroscience research has thrown light on why there is a sharp rise in antisocial behavior during adolescence across time and cultures, and some very important court decisions in juvenile justice (such as the abolition of the juvenile death penalty) have been influenced by this research (Garland & Frankel, 2006). What has emerged from this research is that the immaturity of adolescent behavior is matched by the immaturity of the adolescent brain. White’s (2004) summation of the

key messages from the 2003 conference of the New York Academy of Sciences made this quite clear:

1. Much of the behavior characterizing adolescence is rooted in biology intermingling with environmental influences to cause teens to conflict with their parents, take more risks, and experience wide swings in emotion.
2. The lack of synchrony between a physically mature body and a still maturing nervous system may explain these behaviors.
3. Adolescents' sensitivities to rewards appear to be different than in adults, prompting them to seek higher levels of novelty and stimulation to achieve the same feeling of pleasure.
4. With the right dose of guidance and understanding, adolescence can be a relatively smooth transition. (p. 4)

The onset of puberty also brings with it a 10- to 20-fold increase in testosterone in boys, a hormone linked to aggression and dominance seeking (Ellis, 2003), and brain chemicals that excite behavior increase during adolescence while chemicals that inhibit it decrease (Collins, 2004; Walker, 2002). Many other events are reshaping the adolescent's body and brain during this period that lead to the conclusion that there are *physical* reasons why adolescents often fail to exercise rational judgment and why they tend to attribute erroneous intentions to others. When the brain reaches its adult state, a more adult-like personality emerges, with greater self-control and conscientiousness (Blonigen, 2010). It is important to understand these biological processes, and it is especially important to note the last of the New York Academy of Sciences' messages: "With the right dose of guidance and understanding, adolescence can be a relatively smooth transition" (quoted in White, 2004, p. 4). Indeed, by the age of 28, about 85% of all former delinquents have desisted from offending (Caspi & Moffitt, 1995).

It has long been known that the vast majority of youths who offend during adolescence desist, and only a small number continue to offend during adulthood. Moffitt (1993) called the former adolescent-limited (AL) offenders and the latter life course-persistent (LCP) offenders. LCP offenders begin offending prior to puberty and continue well into adulthood. It is typically found that LCP offenders are saddled with neuropsychological and temperamental deficits that are manifested in low IQ, hyperactivity, inattentiveness, negative emotionality, and low impulse control that arise from a combination of genetic and environmental effects on brain development. LCP offenders constitute only about 7% of all delinquents but are responsible for at least 50% of all delinquent acts. Moreover, LCP offenders tend to commit serious crimes such as assault, robbery, and rape, whereas AL offenders tend to commit relatively minor offenses such as petty theft and vandalism (Moffitt & Walsh, 2003).

AL offenders, on the other hand, have developmental histories that place them on a prosocial trajectory that is



**Photo 12.1** The immaturity of adolescent behavior is matched by the immaturity of the adolescent brain.

temporarily derailed at adolescence. They are not burdened with the neuropsychological problems that weigh heavily on LCP offenders; they are “normal” youths adapting to the transitional events of adolescence and whose offending does not reflect any stable personal deficiencies. More teens than in the past are being diverted from their prosocial life trajectories because better health and nutrition have lowered the average age of puberty, while the average time needed to prepare for participation in an increasingly complex economy has increased. These changes have resulted in about a 5- to 10-year maturity gap between puberty and entry into the job market.

## History and Philosophy of Juvenile Justice

### LO 12.3 Discuss the history and philosophy of juvenile justice.

Up until about 300 years ago, the concept of childhood was not recognized; children were considered not much different from property, and no special allowances for children were recognized in matters of determining culpability and punishment. The minimum legal age of criminal responsibility was defined in early English common law as 7. In the United States today, it ranges from 6 in North Carolina to 10 in Arkansas, Colorado, Kansas, Pennsylvania, and Wisconsin, the same as it is in modern England (Snyder, Espiritu, Huizinga, Loeber, & Petechuck, 2003). Under the increasing influence of Christianity, English courts during the Middle Ages began to exempt children below the age of 7 from criminal responsibility, and children between the ages of 7 and 14 could be held criminally responsible only if it could be shown that they were fully aware of the consequences of their actions. The cutoff age between childhood and adulthood was 14 for the purpose of assigning adult criminal responsibility because individuals were considered rational and responsible enough at this age to marry (Springer, 1987).

Ever since the formation of the English chancery courts during the 13th century, there has been movement toward greater state involvement in children's lives. Chancery courts adopted the doctrine of *parens patriae*, which literally means “father of his country” but practically means “state as parent.” *Parens patriae* gave the state the right to intercede *in loco parentis* (“in the place of parents”) and to act in the best interest of the child or any other legally incapacitated person, such as a mentally disabled individual who is deemed unable to make reasonable decisions. This meant that the state and not the parents had the ultimate authority over children and that children could be removed from their families if they were being delinquent and placed in the custody of the state (Hemmens, Steiner, & Mueller, 2003).

Despite *parens patriae*, the family was still considered the optimal setting for children to be reared in, and as such orphans or children with inadequate parents were assigned to foster families through a system known as binding out. Children whose parents could not control them or who were too poor to provide for them were apprenticed to richer families who used them for domestic or farm labor. This period saw the establishment of the first laws directed specifically at children, including laws that condemned begging and vagrancy (Sharp & Hancock, 1995). The concern over vagrancy led to the creation of workhouses in which “habits of industry” were to be instilled. The first one, called a bridewell, was opened in 1555, and in 1576 the English Parliament passed a law establishing bridewells, or workhouses (also discussed in Chapter 2), in every English county (Whitehead & Lab, 1996). These places were generally dank, harsh, and abusive, but the idea behind them was that if vagrant youths were removed from the negative influences of street life, they could be reformed by discipline, hard work, and religious instruction.

**Parens patriae:** A legal principle giving the state the right to intercede and act in the best interest of a child or any other legally incapacitated person, such as a mentally disabled individual who is deemed unable to make reasonable decisions.

### Childhood in the United States

American notions of childhood and how to deal with childhood misconduct were imported whole from England. On the basis of the bridewell model, the New York House of Refuge was established in 1825 to house orphans, beggars, vagrants, and juvenile offenders. Several other cities, counties, and states soon established their own homes for “the perishing and dangerous classes,” as they were viewed (Binder et al., 2001, p. 202). Children in houses of refuge (discussed in Chapter 10) lived highly disciplined lives and were required to work at jobs that brought income to the institutions. The indeterminate nature of children’s residence allowed the institutions a great deal of latitude in their treatment. Children were required to work long hours, often received little or no training, and were frequently mistreated (Whitehead & Lab, 1996).

It was a frequent practice for poor parents to place their children in residence for idle and disorderly behavior, making it clear that the courts would need to create standards for admission. The courts did this in *Ex Parte Crouse* (1838). The subject of the case was a child named Mary Ann Crouse, who was placed in the Pennsylvania House of Refuge by her mother against the wishes of her father. Mary’s father argued that it was unconstitutional to incarcerate a child without a jury trial, but the Pennsylvania Supreme Court ruled that parental rights are superseded by the *parens patriae* doctrine. This landmark decision established *parens patriae* as settled law in American juvenile jurisprudence (Del Carmen, Parker, & Reddington, 1998).

### The Beginning of the Juvenile Courts

Greater concern for children’s welfare during the 19th century created an impetus for change in the way juvenile offenders were handled as it became increasingly obvious that adult criminal courts were not equipped to apply the spirit of the *parens patriae* doctrine. In 1899, Cook County, Illinois, enacted legislation providing for a separate court system for juveniles, and by 1945 every state in the union had established juvenile court systems (Hemmens et al., 2003). These courts combined the authority of social control with the sympathy of social welfare in a single institution and afforded judges a great deal of latitude in determining how “the best interests of the child” could be realized. The creation of a separate system of justice for juveniles brought with it a set of terms describing the processing of children accused of committing delinquent acts that differentiated it from the adult system. These terms reflect the protective and rehabilitative nature of the juvenile system, in contrast to the punitive nature of the adult system. Table 12.1 lists the terms used to describe the procedure or event from initial contact with authorities to the last one in both the adult and juvenile justice systems today.

**TABLE 12.1** Comparing Procedural and Event Terminology in Adult and Juvenile Court Systems

| PROCEDURE OR EVENT   | ADULT SYSTEM        | JUVENILE SYSTEM    |
|--|---------------------|--------------------|
| Police take custody of offender  | Placed under arrest | Taken into custody |
| Official who makes initial decisions about entry into the court system | Magistrate/judge    | Intake officer     |
| Place accused may be held pending further processing                   | Jail                | Detention          |

(Continued)

**TABLE 12.1** (Continued)

| PROCEDURE OR EVENT   | ADULT SYSTEM                                       | JUVENILE SYSTEM   |
|--|--|---|
| Document charging the accused with specific act                                      | Indictment or information                          | Petition  |
| Person charged with illegal act  | Defendant  | Respondent  |
| Accused appears to respond to charge(s)  | Arraignment  | Hearing   |
| Accused verbally responds  | Enters a plea of guilty, not guilty, or no contest | Admits or denies  |
| Court proceeding to determine whether accused committed the offense                  | Public jury trial                                  | Adjudicatory hearing  |
| Decision of the court as to whether accused committed the offense                    | Verdict of jury                                    | Adjudication by judge; no jury; not public                                  |
| Standard of proof required   | Beyond a reasonable doubt                          | Beyond a reasonable doubt   |
| Court proceeding to determine what to do with person found to have committed offense | Sentencing hearing                                 | Dispositional hearing   |
| Institutional confinement  | Prison   | Juvenile correctional facility  |
| Community supervision  | Probation; parole if had been imprisoned           | Probation; aftercare if had been confined to juvenile correctional facility |

## Processing Juvenile Offenders

### LO 12.4 State the court cases that led to extending due process to juvenile offenders.

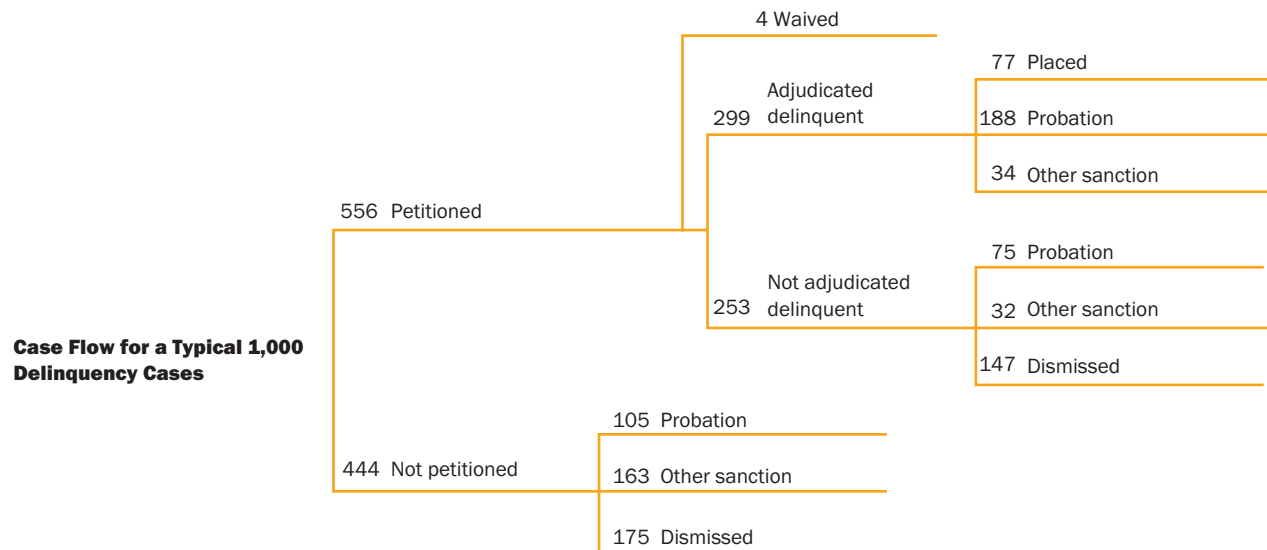
Figure 12.3 illustrates the flow of juvenile cases through the juvenile courts in the United States in 2009 (Knoll & Sickmund, 2012). We see that only 55% of the juveniles taken into custody (“arrested”) or otherwise referred to juvenile court were petitioned (formally charged). Among those not petitioned, most had their cases dismissed, some are placed on informal probation (probation without a formal adjudication of delinquency, sometimes known as diversion), and “other sanctions”—this could be something as minor as a written apology to something as serious as placement in a mental institution.

When a petition has been filed by the juvenile court prosecutor, the court has to decide if it should take jurisdiction of the case. In about 99% of the cases, the court does accept jurisdiction, and about 66% of the time, the juvenile is adjudicated delinquent (found guilty). Note that in 32% of the cases without a finding of adjudication, 30% of those cases were not outright dismissed. In adult court, a finding of “not guilty” always means the defendant is now a free person. Under the principle of *parens patriae*, however, the juvenile court has the power to intervene in a child’s life as a proactive measure even though they have been found not guilty of any wrongdoing. If the juvenile court does not accept jurisdiction, it means the case is waived to adult court, which is one of the most controversial issues in juvenile justice.



■ **FIGURE 12.3** Juvenile Court Case Processing

Source: Knoll and Sickmund (2012), National Center for Juvenile Justice, Pittsburgh, PA.



## Juveniles Waived to Criminal Court

As noted earlier, juveniles can sometimes be *waived* (transferred) to adult criminal court, where they lose their status as minors, become legally culpable for their alleged crimes, and are subject to criminal prosecution and punishments. A transfer to adult court is called a **waiver** because the juvenile court waives (relinquishes) its jurisdiction over the child to the adult system. Waivers are designed to allow the juvenile courts to transfer juveniles over a certain age who have committed particularly serious crimes, or who have exhausted the juvenile system's resources in trying to rehabilitate chronic offenders, to a more punitive system. Juveniles become increasingly likely to be waived if they are chronic offenders approaching the upper age limit of their state's juvenile court's jurisdiction. Note from Figure 12.3 that only about 1.0% of juvenile cases nationwide are waived to adult criminal court.

There are three primary (non-mutually exclusive) ways juveniles can be waived to criminal court:

1. **Judicial waiver:** A judicial waiver involves a juvenile judge's deciding after a "full inquiry" that the juvenile should be waived. (Currently, 48 states use this judicial discretionary model.) In some states, there are mandatory waivers for some offenses, but juvenile judges are involved in determining whether the criteria for a mandatory waiver are met. Currently, 12 states use a system of presumptive waivers in which the burden of proof is on juveniles to prove that they are amenable to treatment and therefore should not be waived; the burden of proof is not on the prosecutor to prove that they should.
2. **Prosecutorial discretion:** This model allows prosecutors to file some cases in either adult or juvenile court. In such cases (usually limited by age and seriousness of the offense), the prosecutor can file the case directly with the adult court and bypass the juvenile court altogether. Currently, 14 states and the District of Columbia allow prosecutorial discretion waivers.

**Waiver:** Refers to a process by which a juvenile offender is "waived" (transferred) to an adult court because they have committed a particularly serious crime or is habitually delinquent.

**Judicial waiver:** Involves a juvenile judge's deciding after a "full inquiry" that the juvenile should be waived to the adult system.

**Prosecutorial discretion:** Allows prosecutors to file some cases in either adult or juvenile court.

**Statutory exclusion:** Waivers in cases in which state legislatures have statutorily excluded certain serious offenses from the juvenile courts for juveniles older than a certain age, which varies from state to state.

3. **Statutory exclusion:** These are waivers in cases in which state legislatures have statutorily excluded certain serious offenses from the juvenile courts for juveniles older than a certain age, which varies from state to state. These automatic waivers are currently found in 31 states.

Studies have shown that juveniles waived to adult courts are more likely to recidivate than youths adjudicated for similar crimes in juvenile court; however, remember that only the most delinquency-prone youths are waived, so this is no surprise (Butts & Mitchell, 2000). Neither does a waiver necessarily guarantee a more punitive disposition. Waived juveniles who commit violent crimes are likely to be incarcerated, but juveniles waived for property and drug offenses often receive more lenient sentences than they would have received in juvenile courts (Butts & Mitchell, 2000).

### Extending Due Process to Juveniles

Contrary to the “best interests of the child” philosophy, juvenile courts often punished children in arbitrary ways that would not be tolerated in the adult system, as illustrated in some famous juvenile cases presented below. Critics argued the *parens patriae* doctrine allowed too much latitude for courts to restrict the rights of juveniles and that because the courts could remove juvenile rights to liberty, juveniles should be afforded the same due process protections as adults. Supporters of *parens patriae* countered that it was suitable and proper for the treatment of children and that any problems concerning juvenile court operation were problems of implementation, not philosophy (Whitehead & Lab, 1996).

The U.S. Supreme Court maintained a “hands off” policy with regard to the operation of the juvenile courts until 1966, when it agreed to hear *Kent v. United States*. In 1961, 16-year-old Morris Kent broke into a woman’s apartment, raped her, and stole her wallet. Because of Kent’s chronic delinquency and the seriousness of the offense, he was waived to adult court. The adult court found Kent guilty of six counts of housebreaking and robbery, for which he was sentenced to 30 to 90 years in prison. Had Kent remained in juvenile court, he could have been sentenced to a maximum of 5 years (the remainder of his minority, which was until age 21 at the time). Kent appealed, arguing that the waiver process had not included a “full investigation” and his counsel had been denied access to the court files.

The Supreme Court remanded Kent’s case back to district court, with Justice Abe Fortas stating,

There is no place in our system of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons. . . . The admonition to function in a “parental” relationship is not an invitation to procedural arbitrariness.

Justice Fortas also noted that under the *parens patriae* philosophy, the child receives the worst of both worlds: “He gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.” The *Kent* decision determined that juveniles must be afforded certain constitutional rights and, thus, began the process of formalizing the juvenile system into something akin to the adult system (Hemmens et al., 2003).

The Supreme Court heard a second case concerning juvenile rights 1 year later in *In re Gault* (1967). In 1964, 15-year-old Gerald Gault was adjudicated delinquent for making obscene phone calls and was sentenced to 6 years in the State Industrial School. An adult convicted of the same offense would have faced a \$5 to \$50 fine and a maximum of 60 days in jail. The Supreme Court used this case to establish five basic constitutional due process rights for juveniles—(a) the right to proper notification of charges, (b) the right to legal

counsel, (c) the right to confront witnesses, (d) the right to privilege against self-incrimination, and (e) the right to appellate review—all of which had been denied to Gault.

A third significant juvenile case is *In re Winship* (1970). In 1967, 12-year-old Samuel Winship was accused of stealing \$112 from a woman's purse taken from a locker. Winship was adjudicated delinquent on the basis of the civil law's "preponderance of evidence" standard of proof (i.e., is it more likely than not that the person committed the act they are charged with?) and was sent to a state training school. On appeal, the Supreme Court ruled that when the possibility of commitment to a secure facility is a possibility, the "beyond a reasonable doubt" standard of proof must extend to juvenile adjudication hearings.

In *McKeiver v. Pennsylvania* (1971), the sole issue before the Supreme Court was, "Do juveniles have the right to a jury trial during adjudication hearings?" The Court ruled that they do not. The Court did not rule that the states cannot provide juveniles with this due process right, only that they are not constitutionally required to do so. And in *Breed v. Jones* (1975), the Supreme Court ruled that the prohibition against double jeopardy applied to juveniles once they have had an adjudicatory hearing (which is a civil process and not technically a trial). Breed had an adjudicatory hearing and was subsequently waived to adult court. The Court ruled that he had been subjected to the burden of two trials for the same offense and therefore the double jeopardy clause of the Fifth Amendment had been violated.



AP Photo/Al Hartmann

**Photo 12.2** Meagan Grunwald (right) enters court for her preliminary hearing. She faces murder charges for helping her boyfriend, who fatally shot a Utah deputy. What rights would she have during this preliminary hearing?

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are an intake officer at juvenile court and have processed a 16-year-old boy named John with an IQ of 80 charged with a string of burglaries. The prosecutor has offered him a plea bargain stating that if he admits to the burglaries, he will receive 6 months' detention followed by probation until he reaches adulthood at age 18. If John refuses to admit the charges, the prosecutor indicates she will seek a waiver to adult court, where the presumptive sentence would be in the range of 36 to 48 months' imprisonment. In your professional

judgment, John would be better off taking the plea, but he is adamant that he will not admit anything, which is his absolute right. You are convinced that his diminished capacity is contributing to his decision, because all of the evidence shows that he did commit the burglaries. John's defense lawyer is ethically bound to abide by his decision to seek a waiver and be tried in adult court, but you are not sure whether you are similarly bound. How far will you go, if at all, to try and convince John to take the plea to save him from adult prison?

In the case of *Schall v. Martin* (1984), the issue before the Supreme Court was whether the preventive detention of a juvenile charged with a delinquent act is constitutional. The Court ruled that it was permissible because it serves a legitimate state interest in protecting both society and the juvenile from the risk of further crimes committed by the person being

detained while awaiting their hearing. This ruling established that juveniles do not enjoy the right to bail consideration and reasserted the *parens patriae* interests of the state.

The last major juvenile case involves the two boys highlighted in this chapter's opening vignette—Sullivan and Graham. Their cases were consolidated as *Graham v. Florida* (2010), in which the majority opinion of the Supreme Court overturning the imposition of life without the possibility of parole for juveniles who have not committed homicide stated,

The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide them with some realistic opportunity to obtain release before the end of that term.

## Juveniles and the Death Penalty

The Supreme Court justices have also needed to wrestle with the moral issue of imposing the death penalty on individuals who committed their crimes as juveniles. From 1973 to 2003, a total of 22 such offenders were executed in the United States (Streib, 2003b). The death penalty has been applied only to juveniles who have murdered in particularly heinous and depraved ways.

The first such case was *Eddings v. Oklahoma* (1982). In 1977, 16-year-old Monty Lee Eddings and several companions stole an automobile. The car was stopped by an Oklahoma Highway Patrol Officer, and when the officer approached the car, Eddings shot and killed him. At Eddings's sentencing hearing, the state presented three aggravating circumstances to warrant the death penalty, but the judge allowed only Eddings's age in mitigation. The Supreme Court vacated Eddings's death sentence, ruling that in death penalty cases the courts must consider all mitigating factors (e.g., Eddings had been a victim of abusive treatment at home) when considering a death sentence.

*Thompson v. Oklahoma* (1988) involved 15-year-old William Thompson, who was one of four young men charged with the murder of his former brother-in-law. All four were found guilty and sentenced to death. Thompson appealed to the Supreme Court, claiming that a sentence of death for a crime committed by a 15-year-old is cruel and unusual punishment. The Court agreed, and using the "evolving standards of decency" principle, it drew the line at age 16 under which execution was not constitutionally permissible.

Seventeen years later, in *Roper v. Simmons* (2005), the Supreme Court redrew the age line at 18 under which it was constitutionally impermissible to execute anyone. Christopher Simmons was 17 when he and two younger accomplices broke into a home, kidnapped the owner, beat her, and threw her alive from a high bridge into the river below, where she drowned. Simmons told many of his friends before the crime that he wanted to commit a murder, and he bragged about it to them afterward. His crime was a "classical" death penalty case—premeditated, deliberate, and cruel—and he was totally unremorseful. Nevertheless, his sentence drew condemnation from around the world, with **amicus curiae briefs** ("friend of the court" briefs presented to the court arguing in support of one side or the other by interested parties not directly involved with the case) being filed in favor of Simmons by the European Union, the American Bar Association, the British Bar Association, the American Medical Association, the American Psychological Association, and 15 Nobel Prize winners, among others.

In a 5-to-4 opinion, Justice Anthony Kennedy noted that the United States was the only country in the world that gives official sanction to the juvenile death penalty (there are a number of countries that execute juveniles without giving the practice "official sanction"). He also noted the growing body of evidence from neuroscience about the immaturity of the adolescent brain. The majority opinion also cited *Atkins v. Virginia* (2002). In noting that

**Amicus curiae briefs:** "Friend of the court" briefs presented to the court, arguing in support of one side or the other, by interested parties not directly involved with the case.

the Supreme Court in *Atkins* had ruled the execution of people with cognitive disabilities to be cruel and unusual punishment because of the lesser degree of culpability attached to people with mental challenges, it reasoned that such logic should be applied to juveniles. The Court also pointed out that the plurality of states (30) either bar execution of juveniles or have banned the death penalty altogether, thus citing state legislation as part of the impetus behind its decision.

Figure 12.4 presents a summary of important Supreme Court cases regarding juveniles' due process rights from *Kent* (1966) to *Miller* (2012). Taken as a whole, what these cases essentially mean is an erosion of the distinction between juvenile and criminal courts. On the positive side, these rulings have helped create a juvenile court system that more closely reflects the procedural guidelines established in adult criminal courts. On the negative side, they have in effect criminalized juvenile courts. To gain due process rights enjoyed by adults, juveniles have surrendered some benefits, such as the informality of solicitous treatment, they nominally enjoyed previously. Only time will tell if this convergence of systems results in more just outcomes for juveniles than they received under unmodified *parens patriae*.

## ? Ethical Issue

### ■ WHAT WOULD YOU DO?

You are an assistant district attorney who has been assigned a heinous murder case. In this case, a young man was burglarizing a house at night when the occupants were sleeping. The man of the house confronted the youth with a baseball bat, but the youth shot him. The man's wife screamed and ran into the bedroom to call the police, but the youth caught up with her, beat her, raped her, and then

shot her also. The young man, who committed the offense on his 18th birthday, was caught later that night. You now need to decide whether you are to seek the death penalty, which is being demanded by an outraged community. Because the young man was only hours into adulthood when he committed the crime, you are urged by an anti-death penalty colleague not to seek it. What will you do and why?

## Juvenile Community Corrections

**LO 12.5** Describe the practices related to community and institutional juvenile corrections.

As seen from Figure 12.5, juvenile corrections mirror the adult system in that the majority of adjudicated delinquents are placed into some form of community-based corrections, and just over a quarter are sent to residential facilities. Juvenile community corrections offer a wide variety of options, all ostensibly designed to implement the three-pronged goal of the juvenile justice system: (a) to protect the community, (b) to hold delinquent youths accountable, and (c) to provide treatment and positive role models for youths. This is known as the balanced approach to corrections (Carter, 2006).

When juveniles are taken into custody, a complicated process of determining how to best deal with them with the above goals in mind is initiated. Juveniles may be released to their parents or detained in a detention center until this determination is made. The most lenient disposition of a case is known as **deferred adjudication**. Depending on the jurisdiction, a deferred adjudication decision can be made by the police, the prosecutor, a juvenile probation officer, or a juvenile magistrate or judge. A deferred adjudication means that an agreement is reached between the youth and a juvenile probation officer, without any formal

### Deferred adjudication:

A decision made by certain criminal justice personnel to delay or defer formal court proceedings if a youth follows probation conditions.



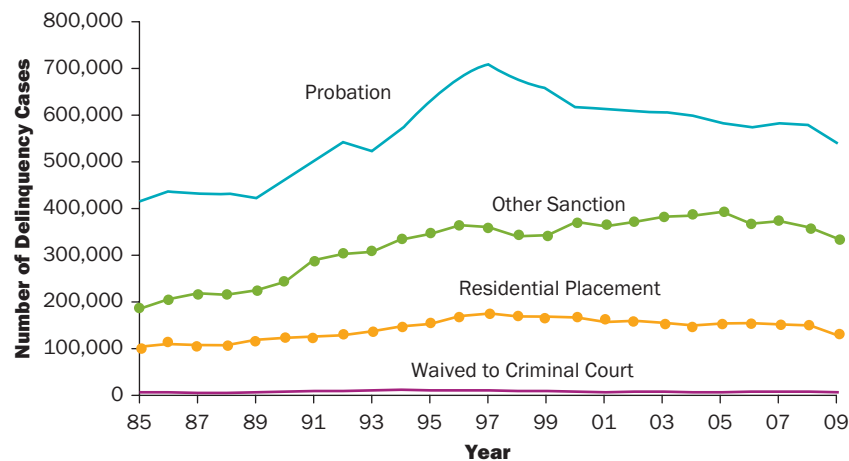
■ **FIGURE 12.4** Supreme Court Cases Altering Juvenile Justice, 1966–2012



■ **FIGURE 12.5** Juvenile Delinquency Probation Caseload, 1985–2009

Source: Livsey (2012). U.S. Department of Justice.

**Since 1997, the number of cases in which juveniles were placed on probation has declined steadily.**



court appearance, that the youth will follow certain probation conditions. This form of disposition is used only for status offenses or minor property offenses, and as long as the juvenile has no further charges, they are discharged from probation within a short time period. No formal record of the proceedings of the case is made in deferred adjudications.

Other juveniles may be placed on formal probation after adjudication in court by a juvenile judge. In such cases, there are records of the proceedings, and probationers are more strictly monitored. As in the adult courts, juvenile judges typically make their dispositional decisions on the basis of recommendations made by probation officers. Juvenile probation officers write **predisposition reports** (analogous to the adult presentence investigation reports) and will have a variety of classification instruments very similar to those used in the adult system, and discussed in Chapters 6 and 14, to help them formulate their recommendations.

Once a youth is placed on probation, under the doctrine of *parens patriae*, the probation officer becomes a surrogate parent to the youth. But with probation officers being saddled with a nationwide average of about 42 cases (Taylor, Fritsch, & Caeti, 2007), they can do very little “parenting.” Probation officers might see their charges only once a month for perhaps 30 minutes, whereas the juveniles’ natural parents see them (or should see them) every day. Juvenile probation officers therefore insist on parental support in working with their children because parental involvement in the rehabilitative effort of juveniles is considered a “must” (Balazs, 2006). It is a must because while probation serves the positive goal of keeping youths in the community and thus avoiding the stigma of institutionalization and the exposure to other seriously delinquent youths, the potential danger is that the probationer may view the disposition as a slap on the wrist and return with more confidence to the old ways that led to their adjudication.

If the child comes from an antisocial family rife with substance abuse and criminality, officers are not likely to get any sort of positive support. Even if juvenile probationers come from prosocial two-parent families, there is often resistance by parents to juvenile authorities “poking their noses” into family affairs and “picking on” their children, who

**Predisposition report:**

A report done in juvenile courts that is analogous to a presentence investigation report in adult courts.

of course are victims of “bad company” (Walsh & Stohr, 2010, p. 457). If parents are eager to help their children, however, there are some excellent parent effectiveness training programs out there. The relatively short-term Prosocial Family Therapy System described by Bleckman and Vryan (2000) is a good comprehensive system with some very encouraging results reported.



## Perspective From a Practitioner

**SKYLER BROUWER, JUVENILE PROBATION OFFICER**

**Position:** Juvenile probation officer

**Location:** Omaha, Nebraska

**Education:** University of Nebraska at Omaha, criminal justice

- Consistency
- Motivational
- Fair
- Resilient

### How long have you been a juvenile probation officer?

Three years.

### What are the primary duties and responsibilities of a juvenile probation officer?

To effectuate positive behavior change in an effort to reduce the likelihood of offenders' recidivating; to confirm that the offenders are in compliance with their court orders through face-to-face contact and from collateral information from treatment and mental health providers, drug testing, and school information; to assist the offenders and their families with finding resources in the community they can benefit from while on probation and to motivate the offenders to lead law-abiding and successful lives (this is all done by building and maintaining positive rapport with the offenders, their family members, and the community support systems); and to update the court on progress, or lack of progress, through court reports, memos, e-mails, petitions, and face-to-face contact.

### What are the characteristics and traits most useful for a juvenile probation officer?

- Honesty
- Confidence
- Ability to think outside the box
- Empathy
- Innovativeness
- Excellent writing and communication skills

### Please describe your typical workday:

Conducting office and field visits with offenders, treatment providers, school administrators, counselors, and teachers to monitor compliance or noncompliance of the court order. Writing predispositional (presentence) and other reports occupies a considerable portion of a juvenile probation officer's time. Our department uses assessment instruments such as the Youth Level of Service/Case Management Inventory and the Adolescent Chemical Dependency Inventory. These instruments assist the probation officer with assessing the offenders' major needs, strengths, and barriers. The assessment breaks down into the following categories: prior and current offenses, education, substance abuse, family, personality and behavior, leisure and recreation, and attitudes and orientation. The Adolescent Chemical Dependency Inventory is an assessment that is a self-report test. This assessment obtains a lot of information in a short amount of time. The assessment screens the following: substance abuse and use, overall adjustment, and troubled youth concerns. Other duties include attending court hearings; communicating with formal and informal supports of the offender through voicemails, phone calls, e-mails, and memos; and ensuring the safety of the community and the offenders through the officer's efforts to assist them in their rehabilitation.

### What is your advice to someone who wants to enter your field?

Be able to use your passion to think outside the box and assist people in becoming role models in their communities.

## Intensive Probation

### LO 12.6 Explain the processes involved in restorative justice.

There will always be some juveniles who require more extensive supervision and treatment than others. To meet their needs and the needs of community protection, a variety of methods have been devised. One such method is intensive supervision probation (ISP), described in Chapter 6. ISP is usually imposed on youths as a last chance before incarceration. Juvenile probation officers with ISP caseloads typically supervise only 15 to 20 juveniles and may carry a gun (Taylor et al., 2007). Officers may make daily contact with their charges, visiting them at home, school, and work to monitor their behavior and progress in these settings. Officers will also enlist the help of other agencies (both public and private) that can provide probationers with more specialized and concrete help of the kind outside the purview of the juvenile court. These agencies will include mental health clinics, substance abuse centers, educational and vocational guidance centers, and welfare agencies (to help juveniles' families). ISP officers know that they cannot possibly provide all the needs of their probationers themselves and that efficient case management consists of their delivering services by using networks of collaborative providers. Delany, Fletcher, and Shields (2003) pointed out the importance of collaborative efforts to assist youths with multiple problems: "Without some level of collaboration among agencies, the odds of relapse and recidivism, which often leads to repeated institutionalization, are high" (p. 66).

Other forms of more intense supervision include electronic monitoring and/or house arrest. These sanctions were discussed in Chapters 6 and 9, and because they operate for juveniles exactly as they do for adults, they are discussed again here.

Youths who commit property crimes are frequently made to pay restitution to their victims to compensate for the victims' losses. This both compensates the victim and holds the youth accountable for their actions. To compensate the community as a whole, an adjudicated delinquent may receive a **community service order**, which is part of a disposition requiring probationers to work a certain number of hours doing some kinds of tasks to help their communities. This work can range from cleaning graffiti from walls to picking up trash along highways or in parks. Restitution and community service orders can go a long way to help juveniles develop a sense of responsibility and the ability to accept the consequences of their actions without rancor. For these reasons, community service and restitution have been called "integral components of the restorative justice philosophy" (Walsh & Stohr, 2010, p. 455).

#### **Community service order:**

Part of a disposition requiring probationers to work a certain number of hours doing tasks to help their communities.

Recall that restorative justice may be defined as "every action that is primarily oriented toward justice by repairing the harm that has been caused by the act" and "usually means face-to-face confrontation between victim and perpetrator, where a mutually agreeable restorative solution is proposed and agreed upon" (Champion, 2005, p. 154). Restorative justice defines delinquency as an offense committed by one person against another rather than against the state, and by doing so it personalizes justice by engaging the victim, the offender, and the community in a process of *restoring* the situation to its preoffense status. Restorative justice thus gives equal weight to the needs of offenders, victims, and the community and focuses equally on each of these rather than being driven solely by offenders ("What do we do with them now?") (Carter, 2006). Victims or their representative are included in the justice process with the sentencing procedure addressing the needs of the victims, including their need to be heard and to be restored to wholeness again as far as possible.

Just as the retributive model reemerged after the alleged failure of the medical model, the restorative justice model has emerged with the apparent failure of "get tough" programs (Welch, 1996). However, the restorative model might not suit all victims because many victims understandably feel that things cannot be "put right" so easily and want the offenders

punished. However, it would be a mistake to see it as a New Age, “touchy-feely” approach to corrections. It holds offenders fully accountable for their actions by applying appropriate punishment and adds the additional dimensions by requiring offenders to accept responsibility for taking action to repair the harm done (Bazemore, 2000).

A meta-analysis showed that restorative justice programs had a weak to moderate positive effect on victim satisfaction, a weak positive effect on offender satisfaction and recidivism, and a moderate effect on restitution compliance (Latimer, Dowden, & Muise, 2005). These findings should be viewed in light of the fact that both victims and offenders select themselves into such programs.

## Residential and Institutional Juvenile Corrections

**LO 12.7** State the criteria for sending juveniles to institutions and the operating principles of those institutions.

One of the dispositional sanctions that can be imposed on adjudicated delinquents is placement in some sort of program in a residential facility. A *residential facility* or *residential treatment center* is not analogous to an adult prison but rather more like a halfway house. Boot camps, discussed in Chapter 6 on adult probation, are one example of such facilities. Another one is *wilderness* or *survival programs*. These are more self-discipline programs designed to test delinquents’ characters and coping skills by providing them with structured challenges. Overcoming these challenges is said to build youths’ confidence and self-esteem, showing them they are capable and not simply victims of circumstance. In such programs, there are no drill instructors bawling and spitting in their faces and belittling them; rather, there are guides who set adventurous challenges for them and provide encouragement. Wilderness programs do seem to be better than boot camps at reducing recidivism, although it is probably true that, on the whole, fewer serious offenders are assigned to wilderness programs than to boot camps. Nevertheless, one review of 22 studies of wilderness effectiveness showed that wilderness participants recidivated at a rate of 29% versus 37% for comparison participants (Wilson & Lipsey, 2000). A more recent meta-analysis of a number of wilderness and survival studies (Clem, Prost, & Thyer, 2015) showed that these programs did, overall, reduce recidivism by about 8%, with longer periods of engagement in a program proving more effective.

Another alternative is a group home. *Group homes* are typically operated by private organizations that contract with juvenile authorities. These group homes tend to specialize in some form of programming such as drug treatment or treatment for “troubled girls.” Youths in these homes remain in their communities and attend school and all the other normal functions of school-age children, but they live with perhaps 10 to 30 other youths at the home.

A commitment to a juvenile institutional corrections facility is a serious matter and is typically the disposition reserved for juveniles who have committed violent offenses or for chronic repeat offenders. There are two broad categories of institutional correctional facilities: long-term and short-term facilities. Short-term facilities include reception and detention centers (the equivalent of adult jails) where children may be held while awaiting release to parents, court adjudication, or release to youth shelters. Long-term facilities are those used for housing juveniles after adjudication. They include secure detention centers/training schools (the equivalent of adult prisons) and boot camps and less secure youth centers/ranches and adventure forestry camps.

Juveniles sent to long-term, secure correctional facilities tend to have committed very serious delinquent acts or are chronic offenders. A study of juveniles sent to long-term secure facilities found that 35% were committed for violent offenses and the remaining



65% for property, drug, or status offenses (Sickmund & Wan, 2003). Racial-ethnic minority youths are even more overrepresented in secure juvenile correctional facilities than minority adults are in adult prisons. According to Musu-Gillette and McFarland (2016), “The rate of residential placement for Black males in 2013 was 804 per 100,000, which was 1.6 times the rate for American Indian/Alaska Native males, 2.7 times the rate for Hispanic males, 5 times the rate for white males, and more than 16 times the rate for Asian/Pacific Islander males.”

Steiner and Giacomazzi (2007) examined recidivism among juveniles waived to adult court and placed into a boot camp program compared with a control group of juveniles who were also waived to adult court but placed on probation rather than into a boot camp program. They found no difference between the boot camp and control groups on rates of recidivism, but boot camp juveniles were significantly less likely to be reconvicted, which may be one bright spot in an otherwise dark performance of boot camps.

Other important differences between juvenile and adult facilities are that juvenile facilities are almost always much smaller (rarely more than 250 juveniles), the costs associated with incarceration are considerably higher, and much more money is spent on programming relative to security (Taylor et al., 2007). For instance, in 2006 the California Youth Authority spent 52% of its budget on academic and vocational training, case planning, counseling, and skills training as opposed to only 13% on custody and security (Taylor et al., 2007). Since then, California has mandated that only juveniles who commit serious violent crimes should be placed in residential facilities. This has resulted in a drastic drop in confined youths from 9,572 in 1996 to 661 in 2018 (Steinhart, 2020). Nevertheless, many of the same problems seen in adult prisons are also seen in juvenile facilities, especially in the larger institutions with low staff-to-resident ratios. As in adult prisons, gangs form along racial/ethnic and neighborhood lines, and there is always the danger of violence and sexual assault against the unaffiliated (Martin, 2005).



## Comparative Corrections

### JUVENILE JUSTICE PHILOSOPHIES

There are a variety of philosophies regarding juvenile justice around the world, which Reichel (2005) classified into four families or models: welfare, legalistic, corporatist, and participatory models. The models reflect broad generalities, and there is much overlap among the countries used to exemplify each. The *welfare* model reflects a concern for the well-being of children at the expense of legalities in which “troubled youths” are funneled through a series of nonjudicial agencies designed to address the problem. Police cautions (a warning by a senior police officer) and restorative justice constitute a big part of this model, which Reichel saw the Australian and New Zealand systems as exemplifying. Sweden is even deeper into the welfare model given that it does not even have a juvenile court system. The police turn over offenders under age 20 to social boards that proceed very informally and only rarely refer a case to the

criminal courts. The Swedish government has even abolished imprisonment for youths. All of this is designed to reduce stigma and support treatment, but it has led to youths’ knowing that they can commit criminal acts almost with impunity (Terrill, 2003).

The *legalistic* model emphasizes the law over treatment, although this does not necessarily mean that the model is less humanistic. Reichel used Italy as an example of this model. Legalism comes in with the realization that there is a need to treat juveniles differently in the criminal code. (Individuals cannot be held responsible for criminal actions in Italy until they reach age 14.) When an individual over age 14 commits a criminal act, they are treated procedurally just like an adult except for the purposes of punishment. In other words, all due process rights afforded adults are also afforded juveniles.

(Continued)

(Continued)

Reichel saw the welfare and legalistic models as opposites in which the problem with the former is the lack of legal protections and the problem with the latter is the lack of compassion and flexibility.

Reichel saw the *corporatist* model, exemplified by England and Wales, as being a compromise between the extremes of the welfare and legalistic models. This model seeks the middle ground between realizing the lack of maturity of juveniles, and thus wanting to “treat” them, and at the same time asserting the need to hold them responsible for their actions, and thus wanting to “punish” them. Juvenile justice in the United Kingdom is primarily the responsibility of Youth Justice Boards (YJBs), which are locally managed social institutions set up in 1998 that operate semiautonomously from the government. There is a great reliance on restorative justice programs in YJBs, but every dispositional option available in the United States, including incarceration, is available in the United Kingdom. Despite huge sums of money being poured into juvenile crime prevention in the United Kingdom, a 10-year evaluation of the progress made by YJBs

found they have had zero to minimal impact on youth offending (Solomon & Garside, 2009).

Whereas the welfare, legalistic, and corporatist models are all examples of efforts to control antisocial behavior through *formal* social control, the final model—the *participatory* model—seeks to control behavior more via informal social control. This model assumes that reform is best achieved if youthful offenders are dealt with outside of the formal court system and enlists the aid of family, school, and various neighborhood “committees” to control juvenile behavior. This system is popular in communist and socialist countries that (theoretically) see no division between the state and the people. Such a model would obviously work best in traditional societies in which there was relatively little geographic mobility and relatively little racial/ethnic diversity. In other words, it would work best in a community where everyone more or less knew everyone else, and had known one another for a long time, and where everyone held the same values and attitudes. It does not, therefore, seem like a model that would work in modern Western societies.

## SUMMARY

### LO 12.1 Define delinquency and status offenses.

- The juvenile justice system in the United States is based on civil law and deals with status offenses (those applicable only to juveniles) and delinquency (crimes if committed by adults).

### LO 12.2 Explain why we see the age–crime curve in terms of adolescent development.

- Juveniles commit a disproportionate number of both property and violent crimes, and this has always been true across time and cultures. Recent scientific evidence relates this situation to the hormonal surges of puberty and a brain undergoing numerous changes. Although most adolescents commit antisocial acts, only a small proportion continue to do so after brain maturation is completed.

### LO 12.3 Discuss the history and philosophy of juvenile justice.

- The history of juvenile justice has three distinct periods. Originally, Western culture relied heavily on parents

to control children. As society has changed, so have the expectations regarding juvenile delinquency. Institutional control of wayward youths was the model from the mid-1500s until the inception of the juvenile courts in the United States during the late 1800s and early 1900s. The juvenile court follows the doctrine of *parens patriae*, but recently there has been a movement away from the broad discretion formerly accorded to juvenile courts to a model more closely reflecting the constitutional protections afforded adult offenders. Much of this change has issued from the increased waivers of juveniles to adult courts and from the often arbitrary control that juvenile justice authorities have exercised over juveniles.

### LO 12.4 State the court cases that led to extending due process to juvenile offenders.

- The juvenile justice system in the United States has gradually changed from a totally paternalistic system governed by civil law procedures to one that now affords juveniles the same rights as adults. However, some have seen this as criminalizing the juvenile justice system.

The greatest success of neuroscience research into the adolescent brain has been the elimination of the juvenile death penalty. We have also seen how the U.S. Supreme Court has ruled life without possibility of parole to be unconstitutional for juveniles who have not committed murder.

**LO 12.5** Describe the practices related to community and institutional juvenile corrections.

- Much of what constitutes juvenile corrections mirrors what we have written about in other sections of this book; thus, we have only briefly highlighted differences between the juvenile and adult systems. Major differences include a greater emphasis on rehabilitation, as exemplified by the ratio of programming to security spent in juvenile correctional facilities and the lesser likelihood of juveniles being sent to secure facilities relative to adults.

**LO 12.6** Explain the processes involved in restorative justice.

- Restorative justice defines delinquency as an offense committed by one person against another rather than against the state, and by doing so it personalizes justice by engaging the victim, the offender, and the community in a process of *restoring* the situation to its preoffense status. Restorative justice thus gives equal weight to the needs of offenders, victims, and the community and focuses equally on each of these rather than being driven solely by offenders.

**LO 12.7** State the criteria for sending juveniles to institutions and the operating principles of those institutions.

- Juveniles may be sent to short-term or long-term facilities to aid in helping them get back on the right track. The avenue for this is related to the severity of the offense committed and to whether they are repeat offenders. The youths' social support systems may also factor into this decision.

## KEY TERMS

Age–crime curve 295

Amicus curiae briefs 304

Community service order 309

Deferred adjudication 305

Delinquents 294

Judicial waiver 301

Parens patriae 298

Predisposition report 307

Prosecutorial discretion 301

Status offenders 294

Status offenses 294

Statutory exclusion 302

Waiver 301

## DISCUSSION QUESTIONS

1. Discuss the development of the concept of childhood in Western culture.
2. Discuss the doctrine of parens patriae in relation to the development of the juvenile court system in the United States.
3. Do you think restorative justice is workable? In what circumstances would it be or not be?
4. Which of the models of juvenile justice outlined by Reichel (2005) do you favor? Give your reasons.
5. Do you think that a highly dangerous person such as Terrance Jamar Graham should ever be released back into the community just because he committed his crimes as a juvenile?



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# 13 Legal Issues in Corrections and the Death Penalty

## TEST YOUR KNOWLEDGE

Test your current knowledge of legal issues pertaining to the rights of people under correctional supervision by answering the following questions true or false. Check your answers on page 389 after reading the chapter.

1. Prison inmates were not afforded any legal protections until the mid-20th century.
2. The majority of lawsuits filed by inmates today have to do with claims of innocence.
3. Prison inmates have no Fourth Amendment protections against unreasonable search and seizure.
4. Prisoners are the only group of individuals in the United States with a constitutional right to medical care.
5. Most Americans support the death penalty.
6. A white murderer is proportionately more likely than a Black or Hispanic murderer to be sentenced to death and to be executed.
7. The death penalty is cheaper than life in prison without the possibility of parole.
8. In the United States, it is permissible to execute a person with a history of mental illness, but not one with a mental disability (i.e., low IQ).

## LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 13.1 Discuss the evolution of law within the field of corrections.
- 13.2 Identify issues and cases involving the First, Fourth, Eighth, and Fourteenth Amendments.
- 13.3 State how and why prisoners' petitions have been curtailed.
- 13.4 Discuss the legal and ethical issues surrounding the death penalty.
- 13.5 Explain the difficulty in determining whether the death penalty is a deterrent.
- 13.6 Discuss the financial cost/benefit ratio of the death penalty.
- 13.7 Analyze the disparities related to race, gender, and disability with regard to the death penalty.
- 13.8 Describe the innocence revolution.

## PRISON WITHOUT LAW

Prisons are not nice places; they were never meant to be. This does not mean that society is ever justified in treating prisoners in less than humane ways. This message never reached at least two state prison farms in Arkansas where inmates' labor was used to produce crops and dairy products, bringing in average yearly profits of \$1.4 million. In 1967, a report was released detailing horrifying conditions at the Tucker and Cummins state penal farms, including widespread sexual assault, floggings, and extortion by the armed prisoners placed in positions of power by prison authorities to save on the expense of hiring correctional officers. A federal judge called the entire Arkansas prison system a "dark and evil world." In addition to such medieval tortures as having one's testicles crushed, a more "modern" method of torture was the Tucker telephone. This device involved applying an electric current to the genitals by cranking an old-fashioned telephone. Depending on the offense, an inmate would receive a local or "long-distance" call.

Worse yet, a number of bodies of former inmates who had been listed as "successful escapees" were dug from unmarked graves on the orders of the new warden, Tom Murton. The scandal eventually became too much for the state governor as more bodies were

(Continued)



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exhumed, and Murton was fired and told that he had 24 hours to leave the state or be arrested for grave robbing. Who will protect inmates from exploitation, torture, and murder if the executive branch of government will not? Only an independent body relatively free of concerns about the personal consequences of doing the right thing can be trusted to safeguard prisoners' rights. As you read this chapter you may become annoyed at what you might consider legal mollycoddling of criminals, but think about how bad the prison system would be without some sort of judicial oversight, which is precisely the way it was in the not-so-distant past.

## Introduction: The History of Law in Corrections

**LO 13.1** Discuss the evolution of law within the field of corrections.

Winston Churchill once said that a civilization is judged by the way it treated its prisoners (Morris, 2002). We do not treat them very well and never have, but many people see prisoners' getting better treatment than they deserve, as summed up in the line "If you can't do the time, don't do the crime." Criminals are perhaps the most despised group of people in society because they are viewed as evil misfits who prey on decent people, so why worry about what happens to them while they pay their debt to society? But as we incarcerate more and more people, how these people are treated while incarcerated becomes more pressing. The only system capable of monitoring the treatment of convicted criminals, other than the criminal justice system itself, is the court system. The courts have changed their attitudes toward the treatment of prisoners over the history of the United States, ranging from complete indifference to attempting to micromanage a state's prison system. In this chapter, we review how inmates in prisons and jails were legally viewed in the past and today.

### The Rule of Law

When we discussed Packer's (1964/1997) crime control/due process model of criminal justice in Chapter 1, we were essentially asking, "How do we best achieve justice for all concerned—for society and those who offend against it?" The only way we can be reasonably assured that justice resides within a legal system is to determine the extent to which it adheres to the **rule of law**. The idea of the rule of law involves the notion that every member of society, including lawmakers, presidents, and prime ministers, is subject to the law. The rule of law has been called "the most important legal principle in the world" (Goff, 1997, p. 760), and according to Reichel (2005) it contains three irreducible elements:

1. A nation must recognize the supremacy of certain fundamental values and principles.
2. These values and principles must be committed to writing.
3. A system of procedures to hold the government to these principles and values must be in place.

All organized societies recognize a set of fundamental values they hold supreme, whether the ultimate principles are secular or religious. Likewise, all literate societies put these values and principles in writing in their holy books or national constitutions. However, the third element is more problematic because it shows whether a country honors its

**Rule of law:** The principle that laws, not people, govern and that no one is above the law.

fundamental values in practice as well as in theory. The law is just words on paper if it is not respected by human actors. If the law is to be consistent with justice, it can be so only if the procedures followed by its agents are perceived as just by everyone. The procedures designed to hold the government to its written principles are articulated by the concept of due process.

When we speak about something that is due us, we are referring to something to which we are rightly entitled. Due process of law is owed to all persons whenever they are threatened with the loss of life, liberty, or property at the hands of the state. It is essentially a set of instructions informing agents of the state how they must proceed in their investigation, arrest, questioning, prosecution, and punishment of individuals who are suspected of committing crimes. The individuals charged with monitoring the behavior of agents of the state with respect to their adherence to due process principles are the judiciary. If the judiciary is corrupt, lax, or the puppets of politicians or public opinion, then the rule of law is likely to be ignored, particularly as it pertains to prisoners.

### The Hands-Off Period: 1866–1963

When discussing prisoners' rights, legal scholars have defined three different historical periods: the hands-off, prisoners' rights, and deference periods. Throughout much of American history the attitude of the courts toward prisoners has been called the **hands-off doctrine**. This doctrine articulated the reluctance of the judiciary to interfere with the management and administration of prisons—to keep their “hands off.” The doctrine rested primarily on the status of prisoners who suffered a kind of legal and civil death upon conviction. Most states had **civil death statutes**, which meant that those convicted of crimes lost all citizenship rights, such as the right to vote, to hold public office, and—in some jurisdictions—to marry. The philosophical justification for civil death statutes, ironically, came from the text of the Thirteenth Amendment to the U.S. Constitution, which abolished slavery in the United States. The Thirteenth Amendment reads,

Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Slavery was thus abolished “except as a punishment for crime.” This enabled prison officials to lease prisoners to local businesses for profit and to use them as unpaid labor to maintain the financial self-sufficiency of prisons—in short, to treat them like property (Call, 2011).

In affirming the ruling of a lower court in *Ruffin v. Commonwealth* (1871), the Virginia Supreme Court made plain the slavelike status of convicted offenders:

For the time being, during his term of service in the penitentiary, he is in a state of penal servitude to the State. He has, as a consequence of his crime, not only



**Photo 13.1** During the “hands-off” period, inmates often resided in dilapidated and overcrowded facilities where they might be overworked, underfed, and mistreated by the state and correctional officials.

Public domain

**Hands-off doctrine:** An early American court-articulated belief that the judiciary should not interfere with the management and administration of prisons.

**Civil death statutes:** Statutes in former times mandating that convicted felons lose all citizenship rights.

forfeited his liberty, but all his personal rights except those which the law in its humanity accords to him. He is for the time being the slave of the State. He is *civiliter mortuus* [civilly dead]; and his estate, if he has any, is administered like that of a dead man.

*Ruffin* was a state case and thus not binding on other states, but the case was consistent with the earlier U.S. Supreme Court case *Pervear v. Massachusetts* (1866). *Pervear* was the foundational case that first clearly enunciated the lack of concern for prisoners' rights contained in the hands-off doctrine. *Pervear* had been sentenced to 3 months' hard labor and a large fine for failing to obtain a license for his liquor store, and he challenged his sentence on the basis of the "cruel and unusual" clause of the Eighth Amendment. The Supreme Court made plain the slavish status of prisoners, ruling that they did not even enjoy the protections of the Eighth Amendment. Convicts thus found themselves at the mercy of prison officials and fellow prisoners without any constitutional protection provided by judicial oversight.

The hands-off doctrine also prevailed because the courts viewed correctional agencies as part of the executive branch of government and did not wish to violate the Constitution's separation of powers doctrine. Prison officials were considered capable of administering to the needs of prisoners in a humane way without having to deal with the intrusion of another branch of government. Besides, if prisoners have been stripped of any rights under civil death statutes, there is nothing for the courts to monitor and protect.

### The Prisoners' Rights Period: 1964–1978

The convict-as-slave approach slowly gave way to the idea that convicted felons retained a modicum of constitutional rights, but it was the business of the executive and legislative branches of state government to honor them. States' rights and fear of an overbearing federal government were more deeply felt concerns in the past than they are today, and the federal courts were still reluctant to move too far in the direction of limiting states' rights or further fueling citizens' distrust of the federal government. We should recognize that the Bill of Rights was intended to apply only to actions of the federal government. It was not until the 20th century that federal courts began to apply the rights in the Bill of Rights to state actions in a process known as incorporation (Walsh & Hemmens, 2014). Incorporation essentially means that due process rights, which formerly needed to be respected only by the federal government, now needed to be respected by the state governments also.

As part of a growing trend toward an overall greater respect for individual rights during the mid-20th century, the courts began to enter into the area of prisoners' rights. The first significant case leading to the end of the hands-off doctrine was *Ex parte Hull* (1941). This case dealt with the denial by prison officials of a Michigan inmate's petition for an appeal of the legality of his confinement (the term *ex parte* refers to situations in which only one party appears before the court). Although Hull's petition was denied (Hull had committed a statutory sexual offense, had violated his parole, and was returned to prison to serve out his original sentence), the U.S. Supreme Court ruled that inmates had the right to unrestricted access to federal courts to challenge the legality of their confinement.

The major issue in prisoner litigation has been the conditions of confinement. The technical term for a challenge to the legality of confinement is a writ of habeas corpus. **Habeas corpus** is a Latin term that literally means "you have the body" and is basically a court order requiring that an arrested person be brought before it to determine the legality of their detention. Habeas corpus is an important concept in common law that precedes even the Magna Carta of 1215. It has been called the "Great Writ" and was formally codified into English common law by the Habeas Corpus Act of 1679. Indicative of the respect in which habeas corpus was held by the Founding Fathers of the United States is that it is one of only

**Habeas corpus:** Latin term meaning "you have the body." It is a court order requiring that an arrested person be brought before it to determine the legality of detention.

three individual rights mentioned in the Constitution. The other two are the prohibition of bills of attainder (imposing punishment without trial) and the prohibition of ex post facto laws (legislation making some acts criminal after the fact). The other individual rights that Americans enjoy were formalized in the first 10 amendments to the Constitution (the **Bill of Rights**) almost as an afterthought. A writ of habeas corpus is not a direct appeal of a conviction but rather an indirect appeal regarding the legality of a person's confinement. In *Coffin v. Reichard* (1944), the Sixth Circuit Court of Appeals widened habeas corpus hearings to include conditions of confinement, but this had little impact for 20 years.

Two cases signaled the end of the hands-off period: *Jones v. Cunningham* (1963) and *Cooper v. Pate* (1964). In *Jones*, the Supreme Court went further than it did in *Hull* and ruled that prisoners could use a writ of habeas corpus to challenge the conditions of their confinement as well as the legality of their confinement. This went way beyond the original meaning of habeas corpus, which was meant only to address the preconviction issue of the legality of a petitioner's detainment. In *Cooper*, the Court ruled that state inmates could sue state officials in federal courts under the Civil Rights Act of 1871, which was initially enacted to protect southern Black people from state officials. This act is now codified and known as 42 USC § 1983, or simply as **Section 1983 suits**, and any deprivation-of-rights grievance filed under it is called a **civil rights claim**. The relevant part of the act reads as follows:

Every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subject, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

What had been a trickle of habeas petitions before *Cooper* quickly became a flood that threatened to drown the federal courts with grievances. The most serious petition led to a federal appeals judge declaring the entire prison system of Arkansas unconstitutional and a “dark and evil world” when he placed it under federal supervision (*Holt v. Sarver*, 1969). As we saw in the opening vignette, inmates were routinely subjected to brutal conditions in Arkansas prisons. This case gave birth to what has come to be known as a “conditions of confinement lawsuit.” From then on, the federal courts became heavily involved in the monitoring the operation of state prison systems. The vast majority of habeas corpus grievances filed today are about the conditions of confinement because inmates' convictions are the legal basis for their confinement.

## The Deference Period: 1997 to Present

After a short time in which prisoners' rights were granted and extended, there began an era called the **deference period**. This period is a partial return to the hands-off period and refers to the courts' willingness to defer to the expertise and needs of prison authorities. The courts have come to the conclusion that it is necessary to place restrictions on prisoners' rights that do not apply to nonoffenders because of the need to balance the rights of offenders with the needs of correctional authorities for safety and security in prisons and jails. The general rule is that prisoners' rights must be secondary to the maintenance of institutional order and security and safety of inmates and staff. The stance of the Supreme Court on this matter has not changed since it was first enunciated in *Bell v. Wolfish* (1979), the case widely considered to be the one that signaled the onset of the deference period:

Simply because prison inmates retain certain constitutional rights does not mean that these rights are not subject to restrictions and limitations. There must be a “mutual accommodation between institutional needs and objectives and the

**Bill of Rights:** The first 10 amendments to the U.S. Constitution.

**Section 1983 suits:** A mechanism for state prison inmates to sue state officials in federal court regarding their confinement and their conditions of confinement.

**Civil rights claim:** A “Section 1983” claim that a person has been deprived of some legally granted right.

**Deference period:** The period of time when there was a partial return to the hands-off approach. It refers to the courts' willingness to defer to the expertise and needs of the authorities.



provisions of the Constitution that are of general application.” Maintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.

## Application of the Amendments to the Constitution to Convicted Felons

**LO 13.2** Identify issues and cases involving the First, Fourth, Eighth, and Fourteenth Amendments.

We begin by looking at certain fundamental rights guaranteed by the First, Fourth, Eighth and Fourteenth Amendments to the Constitution and how they apply to convicted felons.

### First Amendment

The First Amendment to the Constitution reads,

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

**First Amendment:** Guarantees freedom of religion, speech, press, and assembly.

The **First Amendment** guarantees freedom of religion, speech, press, and assembly. It goes without saying that in a prison setting, these freedoms cannot extend to anything that jeopardizes prison safety or security. *Cooper v. Pate* (1964) was essentially a First Amendment issue because Thomas Cooper, a Black Muslim, alleged that he was denied certain religious publications on the basis of his religion. Prison authorities claimed that Black Muslim literature was dangerous and jeopardized the safety and security of the prison because it preached violent revolution and sought to recruit new members. The Supreme Court acknowledged that such literature may have an incendiary effect but ruled that Cooper’s right to free exercise of his religion trumped what might result in security problems.

Free access to written materials does not include such things as a manufacturer’s guide to prison security locks or pornographic materials.

Religious freedom cannot extend to demanding alcohol or exotic foods to satisfy real or invented religious requirements. But the law is more an ideological exercise than a science. As if to prove our point, two federal circuit courts came to opposite conclusions in the same year (2008) regarding Muslim inmates’ right to a halal diet (a diet that prohibits eating pork and shellfish and in which animals must be slaughtered in a certain way). The Eighth Circuit Court ruled that denial of a halal diet did not place an undue burden on the inmate, but the Ninth Circuit Court ruled in a different case that the



Brian Vander Brug/Los Angeles Times/Getty Images

**Photo 13.2** Inmates retain some First Amendment rights, including the right to practice their religious beliefs, if doing so does not unduly interfere with prison security.



refusal to supply a Muslim inmate with a halal diet impinged on his free exercise of religion rights (Robertson, 2010).

Restrictions on inmates' rights to free speech can exceed those necessary to ensure safety and security. In *Smith v. Mosley* (2008), the plaintiff made a statement in a grievance that prison authorities saw as insubordinate and false, for which he received disciplinary sanctions. LeRoy Smith sought relief in the federal court, claiming that he had been punished for exercising his right to free speech. The court disagreed, ruling that although filing a grievance is considered protected speech, the statements made within it are not, and therefore the imposition of sanctions was constitutionally permissible. Freedom of speech or expression can also be limited on moral or ethical grounds. For instance, inmates can write and publish their thoughts or sell personal memorabilia, but "notoriety-for-profit" statutes enacted by the federal government and most states forbid inmates from profiting monetarily from those activities (Walsh & Hemmens, 2014).

The right of assembly allows attendance at religious services and visitation from family and friends, but it obviously cannot be construed as allowing inmates to assemble at a tattoo conference outside the prison walls. Federal courts have also ruled that although Black Muslim groups had the right to assemble for worship, their right to hold religious services could be denied if prison administrators considered such services to constitute potential breaches of security (Inciardi, 2007).

## Fourth Amendment

The **Fourth Amendment** reads,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Fourth Amendment:**  
Guarantees the right to be free from unreasonable searches and seizures.

The right to privacy is a paramount concern of the Fourth Amendment, and so it guarantees the right to be free from unreasonable searches and seizures. What is reasonable inside prison walls is, of course, quite different from what is reasonable outside them. For all practical purposes, inmates have no Fourth Amendment protections because their prison cells are not "homes" of personal sanctuary deserving of privacy (*Hudson v. Palmer*, 1984).

The one area in which Fourth Amendment rights have not been completely extinguished for inmates is that involving opposite-sex body searches. The courts have needed to wrestle with conflicting claims on this issue. One is the equal employment claim of female corrections officers who want to work in male institutions where, because of their size and scope, promotion prospects are greater than they are in female prisons. Working in all-male prisons necessarily means that women officers may view inmates undressed or using the toilet, and they may be required to perform pat-downs and visual body cavity searches (physical searches of body cavities may be performed only by medical personnel). A frequent inmate claim is that cross-gender searches are "unreasonable" within the meaning of the Fourth Amendment.

Bennett (1995) noted that the great majority of cross-gender search complaints are filed by men, which is not surprising given that men constitute about 94% of all state prison inmates (Bohm & Haley, 2007). On the other hand, it is surprising given the frequent complaints from female officers that some male inmates take every opportunity to expose themselves in their presence (Cowburn, 1998). Of course, this does not mean that many inmates are not genuinely embarrassed and offended by needing to bear the indignity of female officers' observing them using the toilet. However, ever since the doors were opened in *Hull*, the

filing of all sorts of complaints has become a sort of inmate hobby for some that serves the purpose of relieving boredom, getting “one over” on prison authorities, and possibly getting one or two rides into town to attend court (McNeese, 2010). There are many legitimate prisoner complaints, but Dilworth (1995) reported that 75% of prisoner petitions are dismissed by courts’ own evaluations, 20% are dismissed in grants of states’ motions, and about 2% result in trials, of which fewer than half result in favorable verdicts for the prisoners. Thus, fewer than 1% of prisoner complaints are considered legitimate. Examples of some frivolous and malicious petitions are given in In Focus 13.1.

In *Turner v. Safley* (1987), the Supreme Court enunciated what has come to be known as the *balancing test*, which means that the courts must balance the rights of inmates



## In Focus 13.1

### ANY COMPLAINTS THIS MORNING?

“Any complaints this morning?” was the drill sergeant’s daily cynical question to newly drafted soldiers during World War II. Of course, none of the draftees confined in the sweltering barracks were ever bold enough to make any complaint, although living conditions were such that they would not be tolerated by the courts if they existed in our prisons today. We wonder what these old soldiers would say about the following.

In dismissing a lawsuit in one case, the Supreme Court noted that the majority of prisoner petitions are frivolous and/or malicious, cost taxpayers millions of dollars, and waste precious court time. Florida attorney general Bob Butterworth asserted, “My office spends nearly \$2 million a year defending that state against inmate suits, most of which contain ridiculous charges or demands” (Butterworth, 1995, p. 1). Similarly, Idaho deputy attorney general Timothy McNeese noted that fully 27% of all litigation in Idaho’s federal district courts involve inmate petitions, most of which are “meritless,” are “downright frivolous,” and “no doubt are filed by inmates out of frustration and anger and desire to get even with a correctional employee or the ‘system’” (McNeese, 2010, p. 321). Presented below are some examples of frivolous and/or malicious petitions gleaned from Butterworth and McNeese that judges must wade through to get to prisoner petitions that are really deserving of attention. The sheer audacity of these examples may put a smile on your face, but they are no laughing matter to the courts, prison administrators, taxpayers, and prisoners with real grievances whose petitions are lost in the pile:

Prisoner starts a riot, shatters glass in his cell, and files an Eighth Amendment suit claiming

cruel and unusual punishment because he cut his foot on the glass.

Prisoner sends for information about prison security and locks and sues because the warden refused to give him the mail containing the information.

Prisoner sues because his ice cream was half melted when it was served to him.

Prisoner sues over unsatisfactory haircut.

Prisoner sues because jailers cut her sausage into small pieces because she had been caught previously masturbating with a whole sausage.

Prisoner sues because he was required to eat off a paper plate.

Prisoner files more than 140 actions in state and federal court over finding gristle in his turkey leg.

Prisoner sues to receive fruit juice at meals and an extra pancake at breakfast.

Prisoner who murdered five people sues because he was forced to watch network television after lightning knocked out the prison’s satellite dish. These programs contained violent material this multiple murderer said was objectionable.

Prisoner loses a suit claiming his rights as a Muslim were violated because the prison put “essence of swine” in his food, then converts to Satanism and demands tarot cards and “doves’ blood.”

Prisoner sues because the disciplinary cell he was placed in had no electrical outlet for his television set.

against the interests of penological concerns of security and order. In ruling that lower courts were wrong in applying the strict scrutiny standard of review (a standard of review used by the courts if a “fundamental right” [anything in the Bill of Rights] or a “suspect classification” [race, religion, or national origin] is involved) to inmates’ constitutional complaints, the Court ruled that these cases require a lesser standard and involve the issue of whether a prison regulation that impinges on inmates’ constitutional rights is “reasonably related” to legitimate penological interests. This “reasonableness” revolves around a number of factors, including whether there is a valid and rational connection between the regulation and a legitimate government interest that is justified in the name of staff and inmate safety and security.

## ? Ethical Issue

### ■ WHAT WOULD YOU DO?

You are a prosecutor in a jurisdiction that is determined to stamp down hard on crime. You have a case before you of a one-legged man charged with stealing the left boot of a pair of cowboy boots worth \$300, making the theft a felony. The defendant has two prior felony convictions, and this would be his third if convicted. You want to dispose of the case quickly with a plea bargain and offer to reduce the charge to a misdemeanor if the defendant will

plead guilty. You also tell him that if he does not take the plea, you will charge him as a habitual offender under the state’s three-strikes law. The defendant refuses to plea, saying that the theft should be a misdemeanor anyway because he stole only one boot. What will you do? After you have decided, take a look at *Bordenkircher v. Hayes* (1978) and see what the prosecutor decided and how this case was actually decided by the Supreme Court (yes, it actually happened).

According to the balancing test, viewing of opposite-sex inmates in embarrassing situations is constitutionally valid if it is reasonably related to legitimate penal interests. The lower courts have interpreted “reasonableness” and concluded that although female officers conducting or observing strip searches of male inmates is tolerated in emergency situations, similar observation and searches by male officers of female inmates are considered unreasonable. This double standard has been justified on two grounds that (a) men do not experience loss of job opportunities if they are forbidden to frisk female inmates, and (b) intimate touching of a female inmate by a male officer may cause psychological trauma because many female inmates have histories of sexual abuse (Bennett, 1995). This raises the question of the possible legal validity of complaints about same-sex body searches if the complainant can show prior sexual abuse by a same-sex person. For instance, will such a person then be in a position to demand an opposite-sex body search?

Inmates’ privacy rights have allowed them the freedom to file fraudulent tax returns claiming millions of dollars in refunds. In 2004, more than 18,000 false tax returns were filed claiming \$68.1 million in refunds, which rose to nearly 45,000 filed in 2009 claiming \$295 million in refunds. The Internal Revenue Service catches most of these frauds, but refunds issued to these prisoners in 2009 amounted to more than \$39 million (U.S. Department of the Treasury, 2010). Some prisoners (such as those working in prisoner industries) earn income and thus must file annual income tax returns to the Internal Revenue Service. Because this income information is considered private, prison officials do not inspect returns for fraudulent claims.

## Eighth Amendment

### Eighth Amendment:

Constitutional amendment that forbids cruel and unusual punishment.

The **Eighth Amendment** reads,

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The pertinent part of the Eighth Amendment for us is the part that addresses cruel and unusual punishment. According to the U.S. Supreme Court, cruel and unusual punishment is punishment applied “maliciously and sadistically for the very purpose of causing harm” (*Hudson v. McMillian*, 1992), although the inmate is responsible for proving that the punishment was so applied. Eighth Amendment protections are denied by prison officials not only if they do something to inmates they should not but also if they fail to do something they have a duty to do. Prison officials must provide inmates with the basic amenities of life, such as food and medical attention, and they must provide them with protection from the physical and sexual predations of other inmates.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a district judge hearing the case of two male inmates claiming to be in love who have filed a suit demanding to be allowed to marry and be housed in the same cell. They also claim that prison authorities have purposely housed them in separate units so that they have no contact with each other. You know that the Prison Rape Elimination Act of 2003 (PREA) has been a potent tool for the selective sanctioning of inmates for any sexual expression at all. The state claims that

prison officials must limit sexual interactions among inmates because of their potential liability regarding allegations of prison rape under PREA. The state also claims that such a thing is unprecedented and could lead to all kinds of unrest in the prison. The inmates claim that they are genuinely in love, that heterosexual inmates may marry, and that to deny their request is discriminatory and a violation of their rights of sexual expression. How will you rule and why?

Liability attaches to prison officials for inmate–inmate assaults if officials display deliberate indifference to an inmate’s needs (Vaughn & Del Carmen, 1995). The courts have struggled to make plain what “deliberate indifference” means, but basically it occurs when prison officials know of, but disregard, an obvious risk to an inmate’s health or safety (*Wilson v. Seiter*, 1991). In other words, prison officials must not turn a blind eye to situations that obviously imperil the health or safety of inmates entrusted to their care. Purposely placing a slightly built and effeminate young man in a cell with a known aggressive sexual predator is an example of a violation of the deliberate indifference standard for which prison authorities would be liable for any injuries suffered. For inmates to prevail in suits involving deliberate indifference claims, they must prove that (a) they suffered an objectively serious deprivation or harm and (b) prison officials were aware of the risk that caused the alleged harm and failed to take reasonable steps to prevent it. *Wilson* is seen as a key decision favoring correctional agencies because of these stringent proof requirements.

Inmate medical care is also covered by the concept of deliberate indifference. As Cohen (2008) stated, “Our jails and prisons have increasingly become the de facto clinical depositories for hundreds of thousands of inmates who are very sick and who require all manner of specialty

medical, dental, and mental health care. Prisons are not only the new mental asylums; they are the community hospitals and emergency wards for certain segments of the poor” (p. 5).

The medical needs of inmates in today’s prisons are as well addressed as those of the average free person of similar class background presenting with similar health problems. Indeed, inmates are the only group of people in the United States with a constitutional right to medical care. According to a Bureau of Justice Statistics report on inmate mortality, prisoners between 15 and 64 years of age had a mortality rate 19% lower than that of the general population (Mumola, 2007). This is attributable mostly to African American male inmates under 45, who had a mortality rate 57% lower than the rate of Black men of similar age in the general population. Of course, not all of this difference is attributable to the medical care inmates receive, and no one claims that such care is better than, or even equal to, the average level of medical care available to most people on the outside. The lower mortality rate is most likely due to the fact that incarceration lowers the probability of being murdered, being exposed to drugs, having access to alcohol and tobacco, and other such risks.

## Fourteenth Amendment

The **Fourteenth Amendment** is a long one, with five sections; we cite only the first section here:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Fourteenth Amendment:

Contains the due process clause, which declares that no state shall deprive any person of life, liberty, or property without due process of law.

This is the due process clause of the Fourteenth Amendment and is the legal basis for granting limited procedural rights to individuals under correctional supervision. The due process clause was first applied to inmates facing disciplinary action for infractions of prison rules in *Wolff v. McDonnell* (1974). In *Wolff*, the Supreme Court declared that although inmates are not entitled to the same due process rights as an unconvicted person on the outside, they are entitled to some. These rights are (a) to receive written notice of an alleged infraction, (b) to be given sufficient time (usually 24 hours) to prepare a defense, (c) to have time to produce evidence and witnesses on their behalf, (d) to have the assistance of nonlegal counsel, and (e) to have a written statement outlining the disciplinary committee’s findings.

In *Sandin v. Conner* (1995), the Supreme Court clarified and trimmed back inmate rights. The Court declared that the above due process rights are triggered only by any disciplinary action that may result in the loss of “good time,” which amounts to an extension of an inmate’s sentence. DeMont Conner had been given 30 days of punitive segregation for making foul and abusive comments to an officer while being subjected to a strip search. The Court ruled that due process rights are not triggered by actions that result in temporary placement in a disciplinary segregation unit, which does not amount to an extension of sentence. The Court also concluded that disciplinary segregation is not an atypical hardship relative to the ordinary hardships of imprisonment.

## Curtailing Prisoner Petitions

### LO 13.3 State how and why prisoners’ petitions have been curtailed.

According to Federman (2004), two congressional acts signed into law in 1996—the Prison Litigation Reform Act (PLRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA)—have severely curtailed prisoner access to the courts. Both acts were passed

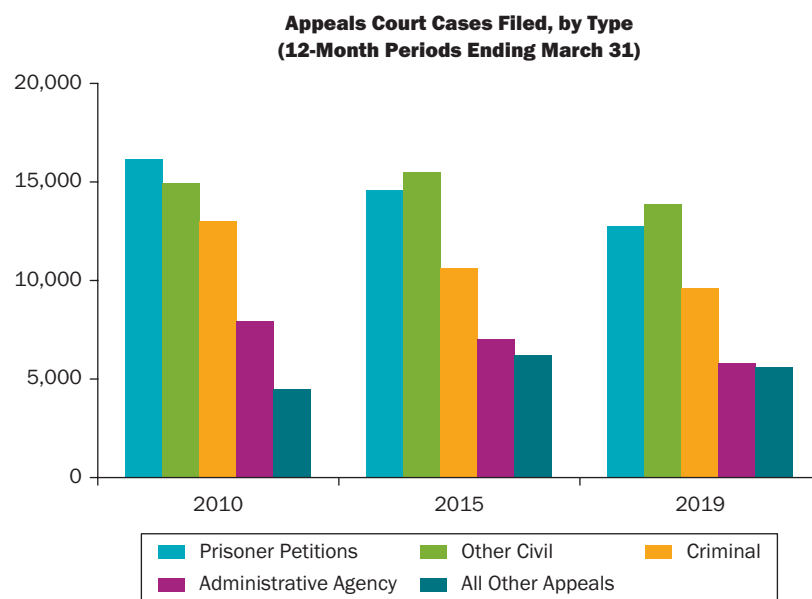


in part to reduce the thousands of lawsuits filed by inmates that clog the federal courts. In the year of the passage of these acts, inmates filed 68,235 civil rights lawsuits in the federal courts, compared with fewer than 2,000 in the early 1960s (Alvarado, 2009). By 2000, the number of such lawsuits had dropped to 24,519 (Seiter, 2005), a 64% decrease from the 1996 figure. Despite claims that these acts are “silencing the cells” (Vogel, 2004), the number of lawsuits filed is still more than 12 times what it was during the 1960s. Figure 13.1 is from a U.S. Courts (2020) report comparing all kinds of prisoner petitions to federal appeals courts with other types of cases. In 2019, prisoner petitions were down 16.4% from 2018.

■ **FIGURE 13.1** Prisoner Petitions and Other Cases Filed in Federal Appeals Courts, April 1, 2018, to March 31, 2019

Source: U.S. Courts (2020).

Note: Beginning in March 2014, data include miscellaneous cases not included previously.



The primary intention of the PLRA was to free prisons and jails from federal court supervision and to limit prisoners' access to the federal courts. Both intentions have largely succeeded. Among the requirements of the PLRA is one that state inmates cannot bring a Section 1983 (civil rights) lawsuit in federal court unless they first exhaust all available administrative remedies, such as filing a written grievance with the warden. The PLRA also states that inmates claiming to be unable to afford the required filing fee for the lawsuit may still need to pay a partial fee, which will be collected whenever money appears in their inmate accounts.

An issue raised by the passage of the PLRA reached the Supreme Court in *Jones v. Bock* (2007), which asked whether the PLRA requires inmates bringing federal civil rights suits to show that they have exhausted all administrative remedies, or the state to prove that they were not exhausted. In a unanimous opinion, the Court ruled that the exhaustion of administrative remedies was not required by the PLRA and that prisoners could bring civil rights lawsuits without the need to demonstrate they have exhausted all administrative remedies. The opinion did not ignore the flood of frivolous suits but intimated that this concern was secondary to the genuine complaints prisoners may have. In *Jones*, Justice Roberts wrote,

Prisoner litigation continues to “account for an outsized share of filings” in federal district courts. In 2005, nearly 10 percent of all civil cases filed in federal courts

nationwide were prisoner complaints challenging prison conditions or claiming civil rights violations. Most of these cases have no merit; many are frivolous. Our legal system, however, remains committed to guaranteeing that prisoner claims of illegal conduct by their custodians are fairly handled according to law. The challenge lies in ensuring that the flood of nonmeritorious claims does not submerge and effectively preclude consideration of the allegations with merit.

As the name implies, the AEDPA is mostly about antiterrorism and the death penalty rather than an act specifically designed to limit habeas corpus proceedings. It was passed in response to the bombing of the Murrah Federal Building in Oklahoma City, with the reform of habeas corpus law attached as a rider. The AEDPA does not eliminate inmates' rights to habeas corpus, but it does restrict its availability (Alvarado, 2009). It does so by limiting successive petitions and judicial review of evidence and may now apply only to inmates who have sought, but have been denied, state court remedies available to them. The AEDPA thus takes habeas corpus partially back along the road to again becoming the preconviction remedy against unlawful imprisonment that it was initially.

A review of Supreme Court decisions on habeas corpus since the AEDPA found that they have upheld the reforms largely as intended by Congress (Scheidegger, 2006). Although some may decry both statutes, the Court's attitude toward them is probably a good thing for all involved for a number of reasons. First, it frees up the federal courts to deal with pressing inmate issues that are really repugnant to the Constitution. Second, we all know that "crying wolf" too often leads to the dismissal of genuine claims, and if the situation continued as it was before the 1996 reforms, the solution may just have been the return to a complete hands-off policy. Third, it saves taxpayers many millions of dollars fighting frivolous lawsuits that simply relieve the boredom of mischievous inmates (again, this does not mean that there are no substantively meaningful claims filed). Many states, aware that the courts could swing back to more active involvement, and of the high cost of defending lawsuits, have established internal mechanisms to more effectively deal with inmate concerns, such as outside mediators and the creation of ombudspersons. Although the PLRA and AEDPA have limited inmate access to the courts, in a roundabout way they have given inmates more immediate and local ways to make their grievances known.

## The Death Penalty and Public Opinion

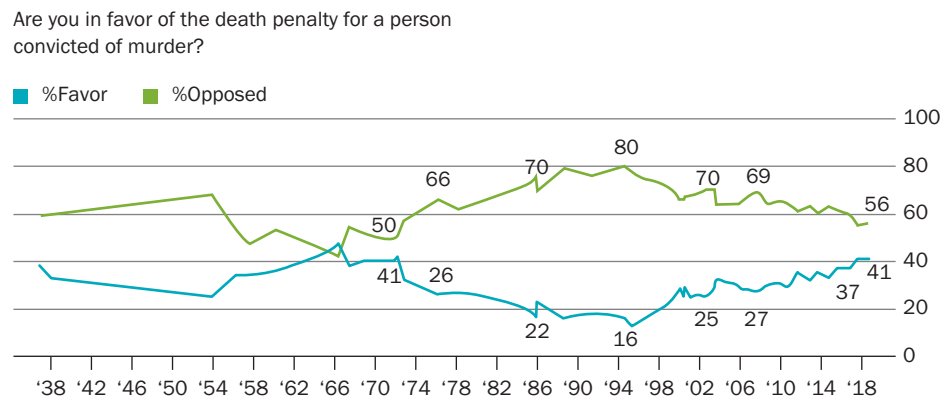
### LO 13.4 Discuss the legal and ethical issues surrounding the death penalty.

The most controversial issue in corrections is the penalty of death. Given its finality (there is no way to put right an execution of someone later found to be innocent), it is understandable that it has been subjected to intense legal and ethical scrutiny. This has not always been the case, because throughout human history the death penalty has been considered a legitimate, appropriate, and necessary form of punishment. As indicated in Figure 13.2, a clear majority of the American public still favors its retention (Gallup, 2019).

Note from Figure 13.2, showing trends in public opinion from 1930 to 2019, that in 1966 there were more people against the death penalty (47%) than for it (42%) ("no opinion" answers account for why the percentages in the figure never add to 100%). Note also that support for the death penalty was greatest during the 1980s and 1990s, with 1994 marking the highest level of support (80%) in the Gallup Poll's history. The most logical reason for this is that public opinion is heavily swayed by the crime rate—as crime goes up, so does support for the death penalty. According to Uniform Crime Reports data, the violent crime rate in 1994 was 713.6 per 100,000 population, which is 3.25 times higher than the 1966 violent crime rate of 220 per 100,000 (Federal Bureau of Investigation, 2013).

■ **FIGURE 13.2** Results of 2019 Gallup Poll on Public Attitudes About the Death Penalty

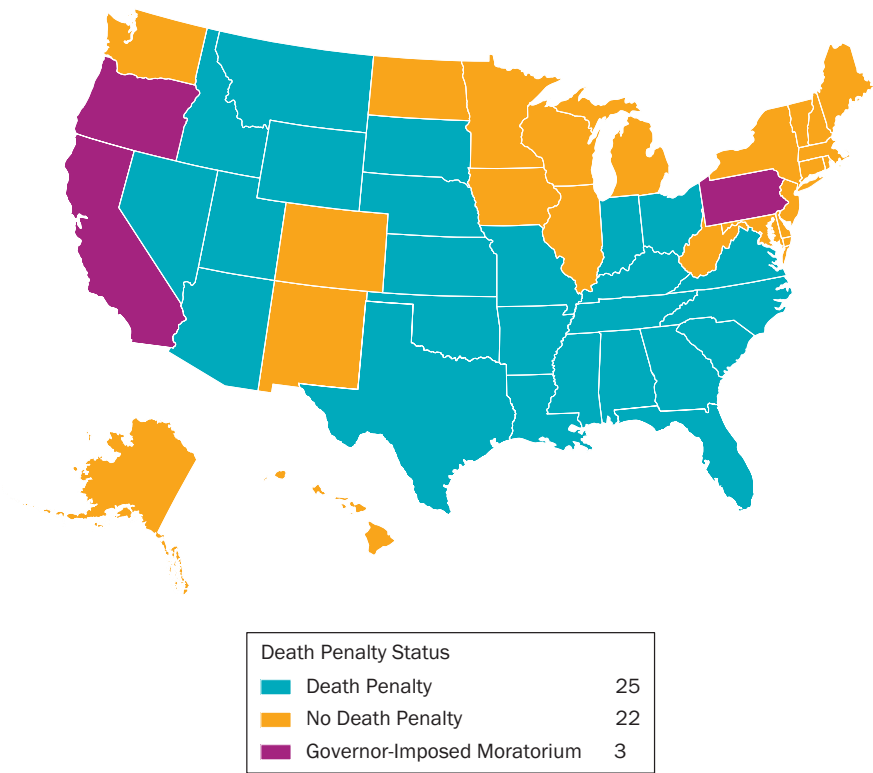
Source: Gallup (2019). Copyright © 2020 Gallup, Inc. All rights reserved. Used with permission.



The currents of public opinion doubtless contribute to the number of states that have retained the death penalty. Figure 13.3 shows that 25 states, the federal government, and the U.S. military retain the death penalty, and 22 states have abolished it or placed moratoria on it. Executions are down 75% since 1996, and only 7 states executed anyone in 2019 (Death Penalty Information Center, 2020a). The United States, Japan, and South Korea, among the world's democracies, retain the death penalty. Figure 13.4 is a graph of the annual number of executions in the United States from the mid-1970s to January 2020.

■ **FIGURE 13.3** States With and Without the Death Penalty as of 2020

Source: Death Penalty Information Center (2020b).



## Methods of Execution Used in the United States

The United States has historically used a variety of methods of execution. A short description of each method is provided in Table 13.1.

## Legal Challenges to the Death Penalty

There have been a number of legal challenges to the death penalty revolving around the Eighth Amendment's prohibition of cruel and unusual punishment. These were typically about the constitutionality of the method of execution, not the penalty per se. The first case to successfully challenge the penalty itself was *Furman v. Georgia* (1972). William Furman had shot and killed a homeowner during a home invasion and was sentenced to death. Furman challenged the constitutionality of his sentence, and the Supreme Court agreed in a 5-to-4 vote. The Court decided that the death penalty per se was not unconstitutional but rather that the arbitrary way in which it was imposed was. The Court argued that because the death penalty is so infrequently imposed, it serves no useful purpose, and that when it is imposed, judges and juries have unbridled discretion in making life-and-death decisions. Furman was paroled in 1984, sentenced to 20 years in prison for a 2004 burglary, and paroled again in 2016.

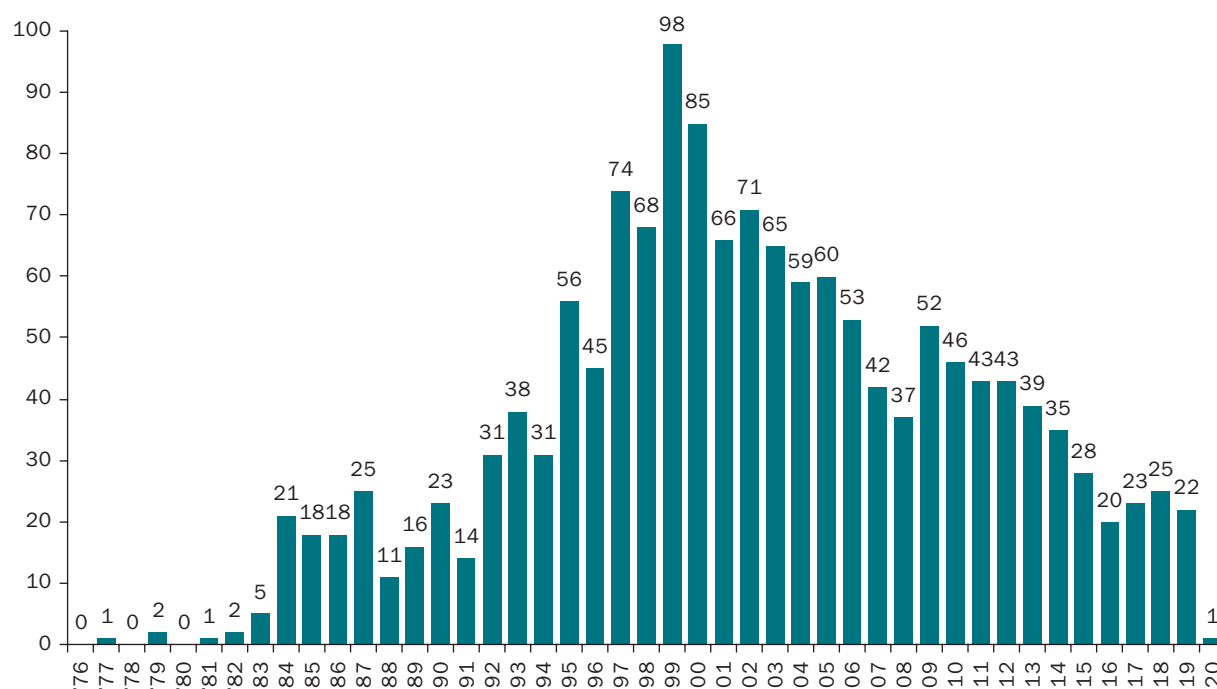
**TABLE 13.1** Number, Type, and Description of Methods of Execution in the U.S.

| METHOD OF EXECUTION | EXECUTIONS, 1976 TO 2019 | DESCRIPTION OF METHOD   |
|---------------------|--------------------------|---|
| Lethal injection    | 1,332                    | Lethal injection is currently the preferred method of execution in all states. The condemned person is strapped to a gurney, and two needles are inserted into the veins in their arms. These needles are connected to intravenous drips, one of which contains sodium thiopental, which puts the condemned person to sleep. The next drip is then released, containing drugs that paralyze the muscular system and stop the person's breathing, followed by a drip of potassium chloride that stops the heart.   |
| Electrocution       | 162                      | Electrocution was introduced in the late 19th century as a more humane method of execution than hanging. A person undergoing execution is strapped to the chair by belts across the chest, groin, legs, and arms. A moist sponge is placed on the person's shaved scalp, and an electrode skullcap is attached over it. Electrodes are also attached to the person's shaved legs. A 15- or 30-second jolt of between 500 and 2,450 volts is then applied, after which the current is turned off to allow a physician to determine whether the person is dead. |
| Gas chamber         | 11                       | The gas chamber was introduced as a more humane alternative to electrocution. The condemned person is placed in an airtight chamber and strapped to a chair below which is a bucket containing sulfuric acid. Sodium cyanide is released into the bucket, causing a reaction that releases hydrogen cyanide gas. Once the prisoner breathes the gas, they die shortly thereafter because this method prevents the flow of oxygen to the brain.  |
| Hanging             | 3                        | Historically the most common form of execution in the United States. The condemned person's height and weight must be measured, the rope must be lubricated, and the noose must be placed around the neck with the knot behind the left ear. If all is done correctly, the drop should cause a rapid dislocation of the neck; if not, the condemned may suffer slow asphyxiation.   |
| Firing squad        | 3                        | The condemned person is hooded and strapped to a chair. Five correctional officers (one of whom is issued a blank round) fire simultaneously, thus causing death.   |

Source: Adapted from Death Penalty Information Center (2019b).

■ **FIGURE 13.4** Number of Executions in the United States From 1976 to January 2020

Source: Death Penalty Information Center (2020a).



Because of this Supreme Court decision, states began changing their sentencing procedures. Some states introduced bifurcated (two-step) hearings, the first to determine guilt (the trial) and the second to impose the sentence after hearing aggravating circumstances (circumstances that increase the heinousness of the offense) and mitigating circumstances (circumstances that decrease culpability) to determine whether death was warranted. Other states removed discretion (the Supreme Court's main problem with it) and made the death penalty mandatory for some murders. The Supreme Court decided against mandatory death sentences in *Woodson v. North Carolina* (1976), ruling it excessive and unduly rigid. James Woodson was involved in an armed robbery in which a convenience store cashier was killed and a customer was seriously wounded.

Georgia revised its statute and opted for the bifurcated hearing. Using this process, Troy Gregg was sentenced to death for two counts of murder and two counts of armed robbery. In *Gregg v. Georgia* (1976), the Supreme Court upheld the constitutionality of the bifurcated hearing and thus of Gregg's death sentence. Gregg escaped from prison the day before his scheduled execution, but he was beaten to death in a bar fight that same night.

In *Coker v. Georgia* (1977), the Supreme Court ruled that the death penalty for rape was unconstitutional. Ehrlich Coker had escaped from prison, where he was serving time for murder, rape, and kidnapping, and promptly proceeded to commit another rape and kidnapping. Nevertheless, the Court struck down the Georgia statute authorizing death for rape under certain circumstances as "grossly disproportionate" and thus repugnant to the Eighth Amendment. Coker is currently serving multiple life sentences in Georgia.

Other legal challenges to the death penalty have to do with issues such as racial discrimination; the execution of juveniles, people with cognitive disabilities, and people with mental illnesses; and challenges to the method of execution. These issues are addressed later in the chapter or were discussed in the chapter on juvenile corrections (Chapter 12).



## Does the Death Penalty Deter?

### LO 13.5 Explain the difficulty in determining whether the death penalty is a deterrent.

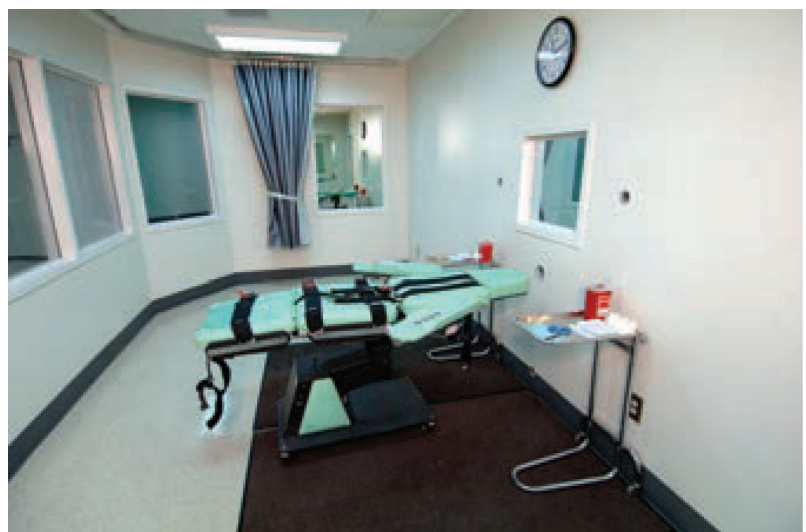
The death penalty is unique in that it is the only punishment required to demonstrate its deterrent effect to validate its constitutionality. We take it for granted that penalties applied to other crimes have a general deterrent effect, if not necessarily the desired specific effect. We have seen that the major argument for punishing wrongdoers is to deter a specific wrongdoer from repeating the act and to prevent potential wrongdoers from committing a similar act. If murderers are executed, it is obvious that they will not be able to harm anyone else, so specific deterrence is not an issue; rather, the issue is about general deterrence. It is also obvious that the threat of the death penalty fails to deter every time a murder is committed, and we can easily document the number of these failures. On the other hand, it is just as evident that we cannot count the times the death penalty threat may have succeeded because we cannot count nonevents. That is, we cannot know how many (if any) people who might otherwise have committed murder did not do so for fear of losing their own lives. The question thus becomes, “Will the presence of the death penalty deter some unknown number of individuals from committing murder?” The question does not apply to all murders; it applies only to the heinous kinds of murder for which the death penalty is an option.

The deterrence argument generates an enormous amount of heat by those who state “conclusively” that it deters (mostly economists) and those who state just as “conclusively” that it does not (mostly sociologists). Bushway and Reuter (2008) inform us that “Economists and criminologists have actively butted heads over the topic of deterrence almost since economists began studying the topic [and] have clashed heatedly over empirical research on the death penalty since the 1970s” (pp. 390–391). According to Shepherd (2005), while “all modern studies that use panel data [comprehensive data from all 50 states and/or across time periods] find a deterrent effect . . . in contrast to economics studies, most of the sociological studies find no deterrence” (pp. 214–218).

Some criminologists and sociologists argue that capital punishment has a **brutalizing effect** rather than a deterrent effect. That is, executions are perceived by some as saying that it is acceptable to kill people who have offended us, and that a segment of those who perceive it this way will act on that perception, and thus executions increase the number of homicides. Once again, economists disagree: “The brutalization idea is not one that economists have given much credence” (Cameron, 1994, p. 206). Most (81.2%) criminologists surveyed by Radelet and Lacock (2009) joined economists on this issue, either disagreeing or strongly disagreeing that the death penalty has a brutalizing effect.

It is difficult to tease any deterrent effect out of the death penalty for a number of reasons. First, it is extremely rare; only about 2% to 6% (depending on jurisdiction) of murders are tried as capital cases (Berk, Li, & Hickman, 2005). Second, of that small number, only 15% of people sentenced to death since the death penalty was reinstated in 1976 have actually been executed (Nagin & Pepper, 2012). If a person is sentenced to death, the time lapse between conviction and execution increased from an average of 14.4 months during the 1950s to an average of 14.5 years in 2010 (Snell, 2011). As we have seen, the deterrent effect

**Brutalizing effect:** The assumption that executions, rather than deterring homicides, actually increase homicides following the executions.



**Photo 13.3** The execution chamber in the Walls Unit in Huntsville, Texas. Texas has executed more than 460 inmates since the death penalty was reinstated in 1982.

of punishment depends on its certainty, swiftness, and severity. Although the death penalty is certainly severe, it is far from being certain or swift. Third, there are so many other variables to consider for inclusion in statistical models, and the inclusion or exclusion of any one may completely change the results (Nagin & Pepper, 2012).

These difficulties led the National Academy of Sciences to convene a subcommittee (the Committee on Deterrence and the Death Penalty [CDDP]) of criminologists, sociologists, economists, and statisticians to try to reach a conclusion. The CDDP examined the results of all credible death penalty studies up to 2011 and concluded that the evidence is ambiguous. The committee's concluded research was "not informative about whether capital punishment decreases, increases, or has no effect on homicide rates." The CDDP also concluded that studies claiming either a deterrent or nondeterrent effect of capital punishment "should not influence policy judgments" (Nagin & Pepper, 2012, p. 102).

## Financial Costs and the Death Penalty

### LO 13.6 Discuss the financial cost/benefit ratio of the death penalty.

One of the arguments we frequently hear made is, "Why should the taxpayer pay to house and feed these crooks for life? Just execute them and be done with it." But the reality is that the cost of a capital case, from arrest to execution, far exceeds the cost of pursuing life without parole (LWOP), even if the inmate spends 50 years in prison. The **Death Penalty Information Center** (DPIC; 2012) cited a study stating that if the sentences of all prisoners on California's death rows were commuted to LWOP, the state would save \$170 million per year. The DPIC also cited a Nevada study showing that a capital murder case costs from \$170,000 to \$212,000 per case more than the cost of a murder case in which the death penalty is not pursued. The reason for all this extra cost is the extensive investigations, expert witnesses, jury costs, deputy costs, and huge attorney fees for seemingly endless appeals.

The American Civil Liberties Union (2012) also reported that in California there was a \$1.1 million difference between the least expensive death penalty prosecution and trial (*People v. Saurez*), which cost \$1.8 million, and the most expensive non-death penalty murder prosecution and trial (*People v. Franklin*), which cost \$661,000. The American Civil Liberties Union also reported that seeking the death penalty for serial killer Charles Ng cost an astounding \$10.9 million. The huge cost is mostly because Ng was in custody in Canada and fighting extradition. Ng is still on death row in California, and if past is prologue, he is extremely unlikely to be executed.

When all appeals are finally exhausted, the average death row inmate has already spent about 15 years on death row, and many have died of other causes. According to the California Department of Corrections, of the hundreds of people on death row since 1978 in that state, only 13 (9 were multiple murderers) were actually executed (Tempest, 2005). So why do death penalty states continue to invest in such a poor proposition? Professor Frank Zimring's answer to this question is, "What we are paying for at such great cost is essentially our own ambivalence about capital punishment. We try to maintain the apparatus of state killing and another apparatus that almost guarantees that it won't happen. The public pays for both sides" (quoted in Tempest, 2005, p. B1). The money spent on pursuing something that perhaps we do not want would be better spent on other criminal justice practices designed to protect the public from the predations of criminals. Think of how many police officers, for example, California could hire with the \$170 million it spends pursuing a goal it knows will be thwarted in all but the tiniest fraction of instances.

**Death Penalty Information Center:** Major (partisan) source of information on the death penalty in the United States.

## Disparity in Death Sentences

**LO 13.7** Analyze the disparities related to race, gender, and disability with regard to the death penalty.

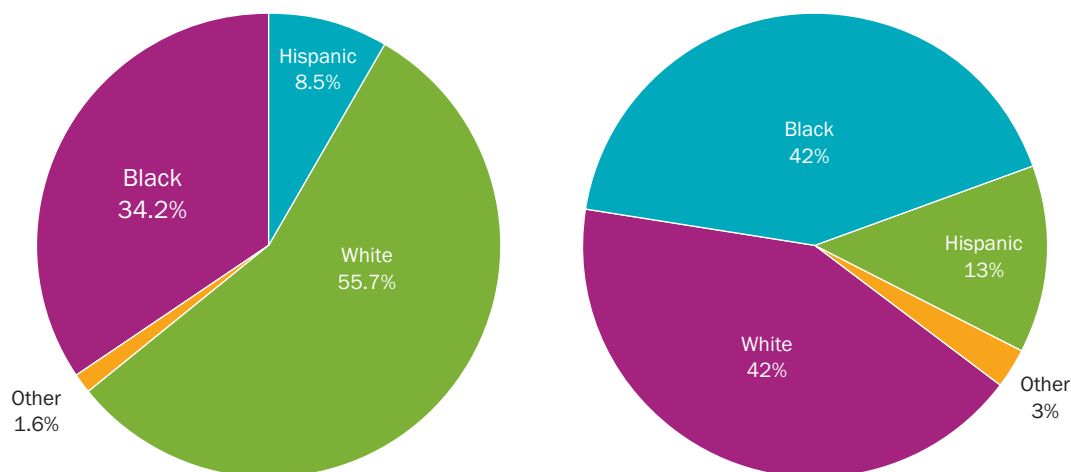
A major concern among criminologists is whether the death penalty is applied in a racially discriminatory fashion. There is no doubt that African Americans have historically been convicted of capital crimes and executed in greater numbers than white people (Bohm, 2012). This issue has been a major one since the Supreme Court addressed it in *McCleskey v. Kemp* (1987). Warren McCleskey was an African American parolee who had been sentenced to three life sentences for multiple armed robberies in 1970 but was released 7 years later. In 1978, he shot and killed a white police officer during the course of a robbery and was subsequently sentenced to death. In challenging his sentence, McCleskey's attorneys offered as evidence a statistical study purporting to show that racial bias existed in death penalty cases in Georgia in that defendants who killed white victims were more likely to be sentenced to death than defendants who murdered Black victims. In ruling against McCleskey's claim, the Court ruled that statistical risk represents averages and does not establish that a specific individual's death sentence violates the Eighth Amendment. In other words, a study of past cases indicating average outcomes does not constitute evidence that McCleskey himself was denied due process. He was executed in 1991.

Figure 13.5 from the DPIC (2020a) shows that Black defendants are executed disproportionately to their percentage of the population. African Americans accounted for between 11% and 14% of the U.S. population between 1976 and 2019 but 34.2% of the executions. Likewise, Black people represent 42% of current U.S. death row inmates. Black people are thus overrepresented by roughly 3 to 1 in terms of both executions and death row residents. However, claims of bias cannot be validly evaluated by comparing percentages of each race executed or on death row with their proportion of the general population, but by comparing each race's proportion of *murderers* with its proportion executed or on death row. In 2018, 53.3% of individuals arrested for murder in the United States were African Americans and 44.1% were white (Federal Bureau of Investigation, 2013). Because the Federal Bureau of Investigation places Hispanics and non-Hispanic white people into a single "white" category (93% of Hispanics/Latinos are defined as white), we cannot make direct Black/white comparisons between Uniform Crime Reports and DPIC statistics. Steffensmeier, Feldmeyer, Harris, and Ulmer (2011, p. 209) tell us that the Black homicide rate is 12.7 times greater than the white rate when Hispanics/Latinos are taken out of the white category. A comparison of homicide and execution/death row data thus leads to the conclusion that "although they are overrepresented among death row populations and executions relative to their share of the U.S. population, blacks are underrepresented based on their arrests and convictions for murder" (Robinson, 2008, p. 191).

There seems to be an emerging consensus that white people are disproportionately more likely to both receive a death sentence and be executed compared with the number of death-eligible homicides they commit. An early post-*Furman* study (Kleck, 1981) found that from 1930 onward in the northern states, white people were more likely to receive the death penalty and that the discrimination evidenced against Black people in death penalty cases during earlier years in the South disappeared during later years. Greenfeld and Hinnens (1985) looked at 1,405 prisoners under sentences of death and found that 15.8 per 1,000 white murderers were sentenced to death versus 11.6 per 1,000 Black murderers. A large study by Gross and Mauro (1989) looked at death sentences in more than 14,000 cases and found that white people received death sentences in 26.5% of the cases involving felony circumstances and in 1.4% of the cases with nonfelony circumstances. On the other hand, 17.2% of Black people convicted in felony circumstances and 0.4% convicted in nonfelony

■ **FIGURE 13.5** Race of Defendants Executed From 1976 to October 2019 (Left) and U.S. Death Row Population by Race in 2019 (Right)

Source: DPIC (2020a).



circumstances received death sentences (McAdams, 1998). A U.S. Department of Justice (2001) study of federal death-eligible cases reached the same conclusion: “United States Attorneys recommended the death penalty in smaller proportions of cases involving Black or Hispanic defendants than in those involving white defendants; the Attorney General’s capital case review committee likewise recommended the death penalty in smaller proportions of cases involving Black or Hispanic defendants. . . . In the cases considered by the Attorney General, the Attorney General decided to seek the death penalty for 38% of the white defendants, 25% of the Black defendants, and 20% of the Hispanic defendants.”

Blume, Eisenberg, and Wells (2004) looked at data from the 31 states that sentenced 10 or more individuals to death from 1977 through 1999 (5,953 death sentences) and compared the proportion of African Americans convicted of murder in each state with the proportion of inmates on death row. In California, Nevada, and Utah, the percentages of murders committed by Black people were 33.8%, 30.2%, and 8.6%, and the percentages of Black people on death row in these states were 35.3%, 33.1%, and 10.5%, respectively. African Americans were thus overrepresented by narrow margins in these states. However, they were underrepresented in Tennessee, Mississippi, and Missouri by large margins. The percentages of murders committed by Black people in those states were 60.4%, 77.7%, and 62.6%, and the percentages of Black people on death row in those states were 33.3%, 59.0%, and 44.1%, respectively.

### The Issue of the Victim’s Race

With white defendants being sentenced to death and executed more often than Black defendants, the race issue with regard to the death penalty has largely become “victim centered”; that is, the focus has moved from bias against Black *defendants* to bias against Black *victims*. To address this bias issue, it should be realized that only a very small fraction of murders are committed in a fashion that makes perpetrators eligible for the death penalty. For a murder to be eligible for the death penalty, it must satisfy a number of elements, including such things as being premeditated, being particularly brutal, involving multiple victims, being committed during the commission of some other felony such as robbery or rape, or

involving the killing of a law enforcement officer during the commission of their duties. A prior homicide conviction is also highly relevant.

Nearly all studies do show that before controlling for aggravating and mitigating factors, killers of white people (regardless of the race of the killer) are more likely to receive the death penalty than killers of Black people. To assess the issue of victim race in federal cases, the National Institute of Justice commissioned three different studies by three independent teams. In a 209-page report examining these findings, Klein, Berk, and Hickman (2006) showed that, without controlling for case characteristics, the death penalty is more likely when victims are white. However, racial disparities disappeared in all three studies when adjustments were made for the heinousness of the crimes. In other words, after controlling for all aggravating and mitigating factors that influence sentencing, there was no evidence of a race effect regardless of whether they were examining just the race of the victim, the race of the offender, or the interaction between victim's and defendant's race.

The Georgia data used in *McCleskey v. Kemp* (1987) were analyzed by statistician Joseph Katz (2005), who found 141 cases that involved white victims and Black perpetrators among the sample of 1,082 homicide defendants. In 67.1% of such cases, the victim was killed during the course of a robbery, compared with 7.4% in Black-victim cases, and 70.6% of the time the victim was a stranger, compared with 9.6% in Black-victim cases. Katz also indicated that "white victim homicides show a greater percentage of mutilations, execution style murders, tortures, and beaten victims, features which generally aggravate homicide and increase the likelihood of a death sentence" (p. 405). This is augmented by Cassell (2008), who noted, "Black-defendant-kills-white-victim cases more often involve the murder of a law enforcement officer, kidnapping and rape, mutilation, execution-style killing, and torture—all quintessential aggravating factors—than do other combinations" (p. 23–24).

The most recent study at the time of this writing (Sharma, Scheb, Houston, & Wagers, 2013) looked at all first-degree murder convictions in Tennessee from 1976 to 2007. Prosecutors sought the death penalty for 76% of white defendants and 62.6% of Black defendants, and 37.3% of white defendants received it versus 23.6% of Black defendants. Prosecutors sought the death penalty in 64% of the cases in which the victim was white and in 33% of the cases in which the victim was Black. When controlling for a variety of aggravating and mitigating factors, as well as demographic and evidentiary variables, they found that the killing of a law enforcement officer, prior violent offenses, and evidentiary (scientific, co-perpetrator testimony, and eyewitness testimony) variables mattered most in receiving a death sentence; that is, case characteristics, not race characteristics, were what mattered.

## Women and the Death Penalty

Both women and men commit murder, but women have constituted only about 2% of persons executed in the United States since the inception of capital punishment (Robinson, 2008). As of July 19, 2019, there were 55 women on death row, or just over 2% of the total death row population of 2,656 persons. Women have accounted for only 16 persons (0.9%) (12 white and 4 Black) actually executed since 1976 (DPIC, 2019a). According to the U.S. Census Bureau, women constituted 53% of the U.S. population in 2018, which means that they are massively underrepresented as persons executed or on death row.

Is this indicative of pro-female bias? It would be if women committed approximately the same number of death-eligible homicides as men, but they consistently commit only about 10% of all homicides each year. Many of these homicides are committed against spouses and lovers in self-defense situations, and only rarely do we find women committing the heinous kinds of murders that draw down the death penalty (Hatch & Walsh, 2016). However, Bohm (2003) estimated that 4% to 6% of female murderers would receive death sentences if both sexes were treated equally.



### THE CHIVALRY HYPOTHESIS

The most obvious extralegal factor that leads to reluctance to impose the death penalty on women vis-à-vis men are the chivalrous and/or paternalistic attitudes about women that tend to prevail in our society (Reza, 2005). Reza (2005) cited the example of a petition to the governor of California signed by male inmates of San Quentin prison in 1941 to prevent the execution of Juanita Spinelli, a career criminal, ex-wrestler, and knife thrower, who murdered a 19-year-old gang member she feared would inform on her. Such an execution, they wrote, would be “a blot on the reputation of the state and repulsive to the people of California because of *her sex and her status as a mother* [italics added]” (p. 183).

The 1998 execution of Karla Faye Tucker, a rock groupie, prostitute, and drug abuser convicted in 1984 of the pickax murder of a man and a woman when she was 23, produced a spate of protests even from pro-death penalty sources. Then there is the case of Susan Smith, who in 1994 strapped her two young sons, ages 3 years and 14 months, into their car seats and rolled the car into a lake, drowning them both. Smith was attempting to reunite with her lover, who objected to the presence of her children. Smith was sentenced to life rather than death for her cold-blooded killings because, according to Reza (2005), she was viewed by the jury as a jilted victim “and loving mother with severe emotional issues” (p. 188).

### THE EVIL WOMAN HYPOTHESIS

The “evil woman” is the counterpart to the chivalry hypothesis to account for the women who have been executed. Both Tucker and Smith were good-looking young women who came across to television audiences as matching the stereotype of femininity despite having committed heinous acts. The evil woman hypothesis avers that women who defy traditional gender roles by not enacting a feminine identity invite the wrath of the male-dominated criminal justice system (Reza, 2005). Such women tend to be unattractive and very much out of prescribed gender roles by acting “manly” and being “man hating.” Two women who have been executed—Wanda Jean Allen and Aileen Wuornos—fit this description and were lesbians. Juanita Spinelli deviated from gender role expectations in many ways. Her prison warden called her the “coldest, hardest character, male or female” and added that she was “a hag, evil as a witch, horrible to look at” (as cited in Shatz & Shatz, 2011, p. 2).

If female murderers on the whole are treated more leniently on the basis of their sex, then men are being discriminated against in a system that claims fairness and neutrality. Victor Streib (2003a), a strong opponent of the death penalty, warned that if women want to be treated as men’s equals, then if men are eligible for the death penalty, women should be, too: “Otherwise, women are lumped with juveniles and the mentally retarded as not fully responsible human beings” (p. 322). Similarly, Elizabeth Reza (2005) opined,

The American judicial system must equalize the capital punishment system so that all, regardless of gender, are punished in a manner society and the legal system has deemed appropriate to impose on those who callously take the lives of others. For those who believe in the death penalty, the only answer to the sentencing equity issue is to execute more women convicted of death-eligible murders until they attain parity with men convicted of similar crimes who are executed or to reduce the number of men executed. For those who oppose the death penalty, the only answer to the issue is to execute no one. (p. 211)

## The Death Penalty and Mental Disability

Mental disability is “a lifelong condition of impaired or incomplete mental development. According to the most widely used definition of mental retardation, it is characterized by three criteria: significantly subaverage intellectual functioning; concurrent and related limitations in two or more adaptive skill areas; and manifestation before age 18” (Mandery,

2005, p. 352). A subaverage level of intellectual functioning is defined as an IQ of 70 or below, which is at the bottom 2% of the general population. An 18-year-old with an IQ of 70 is functioning at the mental level of a child 12 to 13 years old. This does not mean that people with mental disabilities cannot be held responsible for their actions; it only means they should be held to a lower level of culpability than persons operating at higher intellectual levels.

In 1979, paroled rapist Johnny Penry was sentenced to death for a brutal rape and murder in Texas. Penry appealed to the Supreme Court, claiming that it is cruel and unusual to execute a mentally disabled person, and the jury was not instructed that it could consider his low IQ (between 50 and 63) as mitigating evidence against imposing the death penalty. The Supreme Court held in *Penry v. Lynaugh* (1989) that the jury should have been so instructed factor when deciding Penry's sentence, but imposition of the death penalty on a mentally retarded (the term in use at the time) defendant is not per se a violation of the Eighth Amendment. However, Penry's sentence was commuted to life imprisonment in light of *Atkins v. Virginia* (2002).

In *Atkins v. Virginia* (2002), the Supreme Court overruled itself with regard to executing people with mental disabilities. The Court concluded that there was a national consensus against executing people with mental disabilities, and because they are less capable of evaluating the consequences of their crimes, they are less culpable than the average offender. The Court also noted that mentally disabled individuals are more prone to confess to crimes they did not commit and therefore are more prone to wrongful execution.

## The Death Penalty and Mental Illness

It is constitutionally impermissible to execute people with mental disabilities or the "presently insane." The phrase "presently insane" is not the same as saying "insane at the time of the crime." In earlier times, if a person was insane "at the time of the crime," that person would also be insane "presently" because there was no method of restoring a person to sanity. With a number of effective antipsychotic medications available today, new Eighth Amendment and due process issues have arisen. The primary legal issues the courts need to resolve with both mental deficiency and mental illness are the following: (a) Is this person competent to stand trial? (b) Did this person at the time of the crime have the requisite ability to form *mens rea* (guilty mind)? (c) Does this person's mental condition warrant a more lenient sentence than would normally attach to this crime? (Dillard, 2012).

It is permissible to execute someone who has a mental illness, but not someone who has a mental disability. The reasoning behind this is that mental disability is permanent and unalterable, but mental illness is not necessarily either. Although mental disability cannot be faked (because there is a long history documenting each case from early childhood), mental illness can. By adhering to a correctly prescribed medical regimen, most individuals can be restored to sanity and lead meaningful lives.

In *Ford v. Wainwright* (1986), the Supreme Court held that the Eighth Amendment prohibits execution of "insane people," but because "insanity" is an affirmative defense claimed by the defendant; the burden of proof lies with defendants to prove they have a mental illness. In *Ford*, the Court ruled that society's retributive goals are served only if persons are aware of the punishment they are about to suffer and why they will suffer it.

In *Panetti v. Quarterman* (2007), the Court developed what is known as the "rational understanding" test for determining competence for understanding why one is being punished. This test goes beyond the "mere awareness" standard for sanity set in *Ford* and essentially means that the condemned must have a sane, logical, and coherent grasp of why they are being executed in order to show the requisite competence to be executed (Sewell, 2010). The difference between the two standards is that although one might be fully aware that one is going to be executed ("mere awareness"), they might lack a "rational understanding" of why. For instance, such a person may believe that they are being executed because of religious or political views rather than because of a heinous murder.

The law on competency for execution is still murky, but currently it boils down to the fact that condemned individuals can be executed as long as they are mentally coherent enough to know that they are about to die and to understand the reason why. If someone is deemed currently incompetent to be executed, that person can be rendered competent with medication. The issue then becomes whether the state can forcibly administer antipsychotic drugs to insane inmates facing execution. Neither *Ford* nor *Panetti* touched on this issue, although in *Washington v. Harper* (1990) the Supreme Court ruled that in a prison environment an inmate may be involuntarily medicated “if the inmate is dangerous to himself or others, and the treatment is in the inmate’s medical interest” (Sewell, 2010, p. 1292). To the extent that medication is voluntary, the insane on death row are confronted with a horrible choice: madness or execution. To the extent that it is not voluntary, prison physicians are presented with an ethical dilemma in that if they medicate someone “in the inmate’s medical interests,” they are simultaneously rendering the person “sane enough” for execution.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are a prison physician with no strong beliefs for or against the death penalty. Justin Williams, who is on death row in your prison, is on medication for schizophrenia. You need to declare Justin sane enough to be executed, and although you now believe that he is, you start feeling like a farmer fattening up his turkeys for

the Thanksgiving slaughter. You can do your legal and medical duty and continue to medicate Justin. You can lie to prison officials about his insanity, or you can slowly reduce his medication until his insanity again becomes apparent to everyone, and thus you would have no need to lie. Which option do you think is the ethical one, if any?



## Comparative Corrections

### THE DEATH PENALTY IN CHINA AND SAUDI ARABIA

Both China and Saudi Arabia boast low crime rates relative to the United States, the United Kingdom, and France (France and the United Kingdom do not have the death penalty). Perhaps one of the reasons we see few chronic criminals in China and Saudi Arabia is their frequent use of the death penalty. Both countries apply the death penalty to numerous crimes other than murder.

#### China

China is the world’s leader in the number of executions it performs each year. The death penalty may be applied for 55 different offenses (down from 68 prior to 2011), including murder, rape, economic crimes committed by high-level officials, counterrevolutionary offenses, and hooliganism

(Liu et al., 2012). “Hooliganism” was struck from the statutes in 2011 but formerly consisted of a grab bag of offenses such as gang fights and indecent exposure.

According to the Chinese human rights organization Dui Hua (2013), there were 3,000 executions in China in 2012, but because the actual number is a state secret, it could be many more. The 3,000 figure is still nearly 70 times more executions than occurred in the United States (43) in the same year in absolute terms and 18 times greater in proportional terms (DPIC, 2013). Amnesty International (2013) reported, “Thousands of people were executed in China in 2011, more than the rest of the world put together. Figures on the death penalty are a state secret.” Amnesty International

has stopped publishing figures it collects from public sources in China, as these are likely to grossly underestimate the true number.

There are two types of death sentences: immediate and delayed. A delayed sentence is a 2-year suspension of sentence during which defendants must show that they are reformed. If a person is considered rehabilitated, the sentence is usually changed to a long period of incarceration; if not, they are executed. An immediate sentence is carried out within 7 days of imposition of the penalty. Such a sentence is imposed when, in the court's opinion, the defendant is beyond rehabilitation. Execution is by a single shot at the base of the skull or, more recently, by lethal injection, and the condemned person's family is informed of the execution only after the fact (Dui Hua, 2013). China carries out these executions in specially equipped mobile death vans that move from jurisdiction to jurisdiction and often "harvest" valuable body parts (kidneys, corneas, etc.) from the executed persons. The Northwestern Law Center for International Human Rights (2011) claimed that 65% of organ transplants originating from China are from executed prisoners.

### Saudi Arabia

Unlike other legal systems that categorize the seriousness of crimes and the punishments they entail by the severity of the damage they cause to the victim and/or to society, Saudi law characterizes offenses by the types of punishment they engender. If a punishment is prescribed by the Koran, it tends to be more severe than if it is not, regardless of the seriousness of the crime as Westerners might view it. A publication called *Information Pack for British Prisoners in Saudi Arabia*, which the British embassy in Saudi Arabia issues to British nationals arrested there, provides a frightening picture of the

punishment individuals may expect if convicted: "The Saudi courts impose a number of severe physical punishments. The death penalty can be imposed for a wide range of offences including murder, rape, armed robbery, repeated drug use, apostasy, adultery, witchcraft and sorcery and can be carried out by beheading with a sword, stoning or firing squad, followed by crucifixion" (British Foreign Office, 2013, p. 9)

The crimes mentioned above are *hudud* crimes, the most serious crimes in Islamic law. Oddly, murder is not a *hudud* crime. It is a *qisas* crime, which means "equal harm" or "retaliation" and in principle means an eye for an eye and a tooth for a tooth. *Qisas* crimes are crimes against individuals rather than against God. Thus, although the death penalty is prescribed for murder (equal harm), the crime may be forgiven in exchange for *diyya* ("blood money") paid to the victim's survivors.

Saudi Arabia shares China's frequent use of the death penalty. Saudi Arabia "officially" executed 82 people (it is suspected that there are many secret executions also) in 2012—a rate of 3.15 per 1 million inhabitants (Amnesty International, 2013). To put this in perspective, the United States executed 43 in 2012—a rate of 0.139 per 1 million. Thus, Saudi Arabia's rate of execution is at least 23 times higher than the U.S. rate. Alahmed (2013) reported,

Hundreds of people are executed in Saudi Arabia every year—because executions are carried out in secret, no one knows the real numbers. In 2007, the newspaper *Arab News* reported that 400 people remained on death row in the province of Makka alone. There are 12 other regions in the kingdom, so the total number of people awaiting execution could easily reach several thousand.

## The Innocence Revolution

### LO 13.8 Describe the innocence revolution.

The huge advances made in the genomic and brain sciences over the past three decades have revolutionized death penalty discourse in the United States. Abolitionist arguments used to center on such things as legalities, morality, fairness, financial cost, and deterrence issues. Although these arguments are still forcefully made, the new and more powerful issue that now dominates abolitionist arguments is innocence. These arguments appear to have penetrated and influenced public opinion far more than other arguments because guilt and innocence have substance and are far more easily grasped than other types of arguments (Marshall, 2004, p. 579). Evidence of possible actual innocence was central in the decision

not to reinstate the death penalty in New York in 2004, the repeal of the death penalty in New Mexico in 2009, and Governor George Ryan's clearing of Illinois' death row before he left office in 2003 (Aronson & Cole, 2009).

The Innocence Project is an organization founded in 1992 by lawyers Barry Scheck and Peter Neufeld that has taken advantage of modern science to provide scientific and legal expertise for cases (mostly sexual assault cases) in which false convictions may have occurred. The innocence movement received a large boost when President George W. Bush signed the Justice for All Act into law in 2004. This act includes a subsection called the Innocence Protection Act, granting federal inmates the right to petition a federal court for DNA testing to support a claim of innocence. The act provides for funding to encourage states to take measures to preserve organic evidence and to make DNA testing available to convicts claiming innocence. The Innocence Project (2019) notes, "As of September 2019, we have documented 365 DNA exoneration cases in the United States, including 20 death penalty cases." In nearly 50% of DNA exoneration cases, the actual perpetrator was identified by DNA; thus, this technology has been used to convict the guilty as well as to exonerate the innocent.

A problem confronting death penalty opponents is that despite all the celebrations surrounding DNA exonerations (death row and otherwise), it may breathe new life into arguments supporting the death penalty. That is, if the fear of executing an innocent person is a major argument against the use of the death penalty, and if the "certainty of DNA" is the tool that prevents it, then pro-death penalty advocates can now rely on that same "certainty" and say that we have removed the major obstacle (the possibility of executing the innocent) and can move forward with a more just death penalty. Thus, touting DNA as some sort of truth device is a double-edged sword—if it can be used to exonerate the innocent with apparent certainty, it can be used to condemn the guilty with the same apparent certainty. This kind of "certainty" can provide what advocates of the death penalty might describe as a "foolproof" death penalty. This of course upsets those who oppose the death penalty on moral grounds regardless of certainty of guilt.



## Perspective From a Practitioner

GINNY HATCH, INVESTIGATOR FOR IDAHO INNOCENCE PROJECT

**Position:** Investigator for Idaho Innocence Project, investigator for Federal Public Defender's Office

**Location:** Boise, Idaho

**Education:** Master of arts in criminal justice, Boise State University

**How long have you been working with the Innocence Project and Federal Defender's Office?**

Ten-plus years and 4 years, respectively.

**What are your primary duties and responsibilities with the Innocence Project?**

Investigate claims of innocence and wrongful conviction cases.

**In general, what does a typical day working with the Innocence Project look like?**

When you work for the Innocence Project, there are no "typical days." Each day is different and presents new challenges. This type of work is unique because I investigate cases that have already been investigated and processed through the criminal justice system. The Innocence Project typically takes cases during the postconviction phase(s), after most or all of the appeals have been exhausted. This can be particularly frustrating because I am not in control of what has happened in the past, and oftentimes the previous professionals presiding over the case (prosecution and/or defense) are responsible for the errors that have led to the wrongful conviction.



In the early phases of investigation, I spend quite a bit of time reading and abstracting important documents associated with the case (trial transcripts, appellate briefs and decisions, discovery, etc.). If my investigation leads me to believe that someone is truly innocent, I must try to figure out how the conviction resulted. In doing so, I spend a lot of time rereading the case file. After I have a working knowledge of a case, I look for any discrepancies among or between witnesses. If inconsistencies are found, they are followed up on accordingly. I often interview witnesses who testified during trial as well as witnesses who have not yet been interviewed by the original investigators. Witnesses sometimes change their testimony, and they do so for a variety of reasons. It is my job to listen to their story and document it. Sometimes I learn of things that are helpful to my case and sometimes not, but at the end of the day I am interested only in the truth.

There are many factors that lead to wrongful convictions, including problems with eyewitness identification, false confessions, government misconduct, bad science, snitches or informants, and bad lawyers. Luckily, there is an abundance of academic literature on these issues to aid investigators and legal professionals in wrongful conviction cases. This research helps me understand how an innocent person can be convicted of a crime that he or she did not commit. We often enlist the help of expert witnesses to explain to the court what went wrong in a particular case. After all of the

investigative work is completed, what really matters is the battle that takes place in the courtroom—where justice is meted out! If I have learned nothing else from working with the Innocence Project, it is that our justice system is not infallible and we must always fight injustice of any measure.

**What would be your advice to someone either wishing to study or now studying criminal justice to become a practitioner in this career field?**

Innocence Project work requires profound dedication, a passion for justice, and an inordinate amount of patience. The job is complex and can almost always be described as an uphill battle. It is extremely difficult to prove a person's innocence after he or she has been found guilty in our criminal justice system. In doing so, you are essentially admitting that our justice system makes mistakes, and no one likes to think that innocent people may be incarcerated.

I strongly recommend that students who are interested in working as investigators complete internships for the organizations or agencies of interest to them. Most agencies are looking for experience in their field, so every bit helps. It is beneficial to have a bachelor's degree in criminal justice, but this is certainly not required. The type of educational background needed for an investigator position really depends on the type of agency one wishes to work for.

## SUMMARY

**LO 13.1** Discuss the evolution of law within the field of corrections.

- The only way we can be reasonably assured that justice resides within a legal system is to determine the extent to which it adheres to the rule of law. That is, a nation must recognize the supremacy of certain fundamental values and principles that have been committed to writing, and there must be a system of procedures to hold the government to these principles and values.
- The courts have moved through three general periods with respect to inmates' rights: the hands-off period, a short period of extending many rights to prisoners, and

the current retreat to a limited hands-off policy. During the hands-off period, prisoners were considered slaves of the state and had no rights at all.

**LO 13.2** Identify issues and cases involving the First, Fourth, Eighth, and Fourteenth Amendments.

- During the period of extending prisoners' rights, the federal courts extended a number of First, Fourth, Eighth, and Fourteenth Amendment rights to them, although these rights were obviously not as extensive as they would be outside prison walls. (However, inmates are the only group of Americans with a constitutional right to medical treatment.)

- Because of the granting of these rights, the federal courts became clogged with Section 1983 suits challenging the conditions of their confinement, the great majority of which were demonstrably frivolous.

**LO 13.3** State how and why prisoners' petitions have been curtailed.

- The U.S. Congress passed the Prison Litigation Reform Act (PLRA) in 1996, limiting prisoner access to federal courts and loosening the grip of the courts on state correctional systems because of these excessive suits. Congress also passed the Antiterrorism and Effective Death Penalty Act (AEDPA) in the same year, with a rider limiting inmates' habeas corpus rights. Numbers of prisoners' petitions to the federal courts dropped substantially for the first few years after the passage of the PLRA and AEDPA, but they are now climbing back up.

**LO 13.4** Discuss the legal and ethical issues surrounding the death penalty.

- The majority of Americans support capital punishment, but their opinions fluctuate with the crime rate and with the availability of life without parole (LWOP).
- Because the United States stands almost alone among democracies in retaining the death penalty, the issue has generated much debate and numerous court cases questioning its constitutionality.
- A variety of methods of execution have been used in the United States, but lethal injection is used almost exclusively today in all states with the death penalty.

**LO 13.5** Explain the difficulty in determining whether the death penalty is a deterrent.

- The death penalty is often defended for its deterrent effect, but there is heated disagreement about whether it deters. A committee of experts who examined all death penalty studies up to 2011 concluded that we do not really know whether it is a deterrent.

**LO 13.6** Discuss the financial cost/benefit ratio of the death penalty.

- Seeking the death penalty for a murderer is immensely more costly than seeking LWOP, and even those given the death penalty are rarely executed.

**LO 13.7** Analyze the disparities related to race, gender, and disability with regard to the death penalty.

- Historically, African Americans have been executed disproportionately not only to their numbers in the population but also to their numbers of murderers. However, today Black murderers are proportionately less likely to be sentenced to death and to be executed than white murderers.
- The debate has now swung away from discrimination against Black defendants to discrimination against Black victims because killers (regardless of their race) of white people are more likely to receive the death penalty than killers of Black people. However, once aggravating and mitigating circumstances are taken into account, there is disagreement over whether this bias is still in evidence.
- Women have constituted only 2% of persons executed in the nation's history. They commit far fewer death-eligible murders than men, but it is estimated that if they were treated the same as men they would have constituted between 4% and 6% of those executed in the United States.
- The chivalry hypothesis has been advanced to explain why we executed fewer death-eligible female murderers than death-eligible male murderers, and the evil woman hypothesis has been advanced for females who are executed.
- It is constitutionally impermissible to execute people with mental disabilities (defined as an IQ less than or equal to 70) in the United States, but it is permissible to execute people who are mentally ill. The reasoning is that mental disability cannot be changed or faked, while mental illness can. It is impermissible to execute people who are "presently mentally ill," but they can be restored to sanity with drugs and then executed.

**LO 13.8** Describe the innocence revolution.

- Advances in the genomic and brain sciences have led to an innocence revolution in death penalty discourse. DNA testing has resulted in many wrongly convicted persons being freed and the guilty being convicted. DNA is not a panacea for death penalty opponents, however, because death penalty advocates now say that with this advance we can go forth with an "error-free" death penalty.

## KEY TERMS

|                                      |                          |                        |
|--------------------------------------|--------------------------|------------------------|
| Bill of Rights 319                   | Deference period 319     | Hands-off doctrine 317 |
| Brutalizing effect 331               | Eighth Amendment 324     | Rule of law 316        |
| Civil death statutes 317             | First Amendment 320      | Section 1983 suits 319 |
| Civil rights claim 319               | Fourteenth Amendment 325 |                        |
| Death Penalty Information Center 332 | Fourth Amendment 321     |                        |
|                                      | Habeas corpus 318        |                        |

## DISCUSSION QUESTIONS

1. What were the two main reasons or justifications behind the hands-off doctrine?
2. Why does the concept of habeas corpus have such a revered place in common law?
3. Why do you think that the United States retains the death penalty when nearly all other democracies eliminated it long ago? Should we eliminate it? Why or why not?
4. Argue your case for whether the death penalty does or does not deter.
5. If you are for capital punishment on the grounds of just deserts, do you think it is justified in financial terms? Why or why not?
6. What do you think accounts for the fact that prosecutors today seek the death penalty proportionately more often for white people than for people of color, a reversal of past practices?
7. Describe the reasoning behind the fact that people with mental illnesses may be executed but people with mental disabilities may not.



Photo by Justin Sullivan/Getty Images



# 14

## Correctional Programming and Treatment

### TEST YOUR KNOWLEDGE

Test your current knowledge of correctional programming and treatment by answering the following questions true or false. Check your answers on page 389 after reading the chapter.

1. Trying to rehabilitate criminals is mollicoddling them and costs society too much; therefore, we should stop trying.
2. Programs to treat offenders and prevent recidivism are the biggest budget items in corrections after salaries.
3. Even the best run treatment programs reduce recidivism by only about 5%.
4. Personal experience will give you a better understanding of what will or will not work with criminals.
5. Because addiction is a brain disease, the major way of attacking it in corrections is through pharmaceutical means.
6. Sex offenders are less likely to reoffend than almost any other type of offender.
7. Most people arrested in major cities test positive for some kind of illegal drug.
8. There are more individuals with mental illness in U.S. jails and prisons than in mental hospitals.

### LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 14.1** Define rehabilitation and explain why it is imperative.
- 14.2** State the principles of evidence-based practices.
- 14.3** Explain the principles of cognitive-behavioral therapy.
- 14.4** Discuss the options for substance abuse programming and the effectiveness of each.
- 14.5** Explain the function and effectiveness of anger management programs.
- 14.6** Describe the special treatment modalities applied to sex offenders.
- 14.7** Discuss the special problems the criminal justice system has dealing with offenders who have mental illnesses.

### LIFE'S TURNING POINTS

Kathy Gardener was born to an “all-American” family in Dayton, Ohio. Her parents sent her to a Catholic girls’ school, where she did well in her studies. All seemed to be going well for Kathy until she was 16 years old, when she went to a local air force base with two older friends from the neighborhood to meet the boyfriend of one of the girls. The boyfriend brought along two of his friends, and the six of them partied with alcohol, drugs, and sex. It was Kathy’s first time experiencing any of these things, and she discovered she liked all of them. Thus began a 9-year spiral into alcohol, drug, and sex addiction and into all the crimes associated with these conditions, such as drug trafficking, robbery, and prostitution.

When Kathy was 25 years old, she was involved in a serious automobile accident in which she broke her pelvis, both legs, and an arm and suffered a concussion. She was charged with a probation violation, drunken driving, and possession of methamphetamine for sale. Kathy spent 10 months recuperating from her injuries, during which she was drug, alcohol, and sex free. Because of her medical condition, she was placed on probation. Her probation officer (PO) was a real “knuckle-dragger” who demanded full and immediate compliance with all conditions of Kathy’s probation but who also became something of a father figure to her. While she was recuperating, she was often taken care of by a male nurse she described as “nerdy but nice.” Her parents, who had been estranged from her for some time,

(Continued)



(Continued)

became reacquainted with her, and her PO and nurse taught her to trust men again. She also occupied her time taking online college courses on drug addiction and counseling. She eventually married her “nerdy nurse” with her parents’ blessing, and one of the guests was the “knuckle-dragger.”

Kathy’s story illustrates some core ideas in this chapter. No matter how low a person sinks into antisocial behavior, they are not destined to continue the downward spiral. There are a number of treatment programs available for all sorts of problems that get people into trouble with the law. Of course, not everyone is confronted with such a dramatic turning point in their life as a major automobile accident, leaving the person plenty of time to ruminate about life and where they are going. Kathy’s addictive personality got her into all kinds of trouble, and she knew it. People must come to this realization, and when they do there must be programs in place to help them turn their lives around or else they will probably fail and the community will suffer.

## Introduction: The Rise and Fall (and Rise Again) of Rehabilitation

### LO 14.1 Define rehabilitation and explain why it is imperative.

As we have seen, there are five primary goals of the correctional system: deterrence, incapacitation, retribution, rehabilitation, and reentry. This chapter deals with the fourth of these goals—rehabilitation. The term *rehabilitation* means to restore or return to constructive or healthy activity (habilitation), but many offenders never experienced anything close to habilitation in the first place, so there is little to restore. Correctional treatment or programming needs to begin at the beginning and try to provide some of the things previously missing from the lives of offenders. Such programming obviously cannot supply the warmth and nurturing so critical during the early years of life or the deep sense of attachment and commitment to social institutions that comes from such experiences. However, programming and treatment can provide some of the concrete rewards, such as an education and job training, that most of us have had largely thanks to the attachments to the family and other social institutions we enjoyed as children, and it can do its best to change the destructive thinking patterns that infect criminal minds.

We try to rehabilitate criminals with the realization that whatever helps offenders helps the community. As Warren Burger, a former Supreme Court chief justice, opined, “To put people behind walls and bars and do little or nothing to change them is to win a battle but lose a war. It is wrong. It is expensive. It is stupid” (as cited in Schmallegger, 2001, p. 439). In this chapter, we look at various ways treatment personnel have been fighting the war. When reading this chapter, keep in mind that the vast majority of money assigned to correctional agencies is spent on surveillance and control functions. According to the National Center on Addiction and Substance Abuse (2010), among the 1.5 million inmates in jails and prisons nationwide in 2006, only 11.2% had received professional treatment since admission.

The American Prison Association (now the American Correctional Association) declared its commitment to rehabilitation in the following excerpt from its *Declaration of Principles*, written nearly a century and a half ago (see In Focus 14.1).

Influenced by British pioneers Alexander Maconochie and Walter Crofton, rehabilitation was the goal of the early American prison reformers, such as Zebulon Brockway. The ideal of rehabilitation reached the pinnacle of its popularity from about 1950 through the 1970s, when the medical model of criminal behavior prevailed. The medical model viewed crime as a moral sickness that required treatment, and prisoners were to remain in custody



## In Focus 14.1

### THE AMERICAN CORRECTIONAL ASSOCIATION'S 1870 DECLARATION ON TREATMENT

Corrections is responsible for providing programs and constructive activities that promote positive change for responsible citizenship.

Opportunity for positive change or “reformation” is basic to the concept of corrections because punishment without the opportunity for redemption is unjust and ineffective. Hope is a prerequisite for the offender’s restoration to responsible membership in society.

Sound corrections programs at all levels of government require a careful balance of community and institutional services that provide a range of effective, humane, and safe options for handling juvenile and adult offenders.

Corrections must provide classification systems for determining placement, degree of supervision,

and programming that afford differential controls and services for juvenile and adult offenders, thus maximizing opportunity for the largest number.

Corrections leaders should actively engage the community to assist in the restoration and reintegration of the offender.

Offenders, juvenile or adult, whether in the community or in institutions, should be afforded the opportunity to engage in productive work, participate in programs including education, vocational training, religion, counseling, constructive use of leisure time, and other activities that enhance self-worth, community integration, and economic status.

*Source: American Correctional Association (2013).*

under indeterminate sentences until “cured.” Consistent with the switch from a punishment role to a more rehabilitative corrections role, classification systems, individual and group counseling, therapeutic milieus, and college classes were added to the usual rehabilitative fare of labor, basic education, and vocational training (Cullen & Gendreau, 2001).

The rehabilitative goal was questioned and then fell apart with the publication in 1974 of Robert Martinson’s (1974) article “What Works? Questions and Answers About Prison Reform,” in which the author concluded that “with few and isolated exceptions the rehabilitation efforts that have been reported so far have no appreciable effects on recidivism” (p. 25). Unfortunately, the rhetorical question “What works?” got translated into a definitive “Nothing works” and became a taken-for-granted part of corrections lore. Before we can decide whether something does or does not work, we need to define thresholds for what we mean. If we demand 100% success, then we can be sure that “nothing works.” A program designed to change people is not like a machine that either works or does not. Human nature being what it is, nothing works for everybody, some things work for some people some of the time, and nothing will work for anybody all of the time. High failure rates existed in many fields at their inception, but as practitioners in those fields learned from their mistakes and their successes, failure rates inevitably dropped.

### The Shift From “Nothing Works” to “What Works?”

Many of the correctional programs Martinson (1974) surveyed sought to change behaviors unrelated to crime, used programs that were not intensive enough, and used staff who were not adequately skilled. Few programs were based on the proper assessment of offender risks and needs, and programs often were faddish “Let’s see what happens” programs, including everything from acupuncture to Zen meditation. Although both these practices are

beneficial in their own right, they are hardly useful for changing criminal lifestyles. One probation department actually insisted that male offenders should “get in touch” with their feminine side by requiring them to dress in female clothes, and another required “poetry therapy” (Latessa, Cullen, & Gendreau, 2002). Correctional resources are scarce and should be expended only on programs that have proved themselves useful in reducing recidivism.

## ? Ethical Issue

### ■ WHAT WOULD YOU DO?

You are the chairperson of your state’s financial appropriation committee. The director of state corrections is again asking for a substantial increase in the prison budget for new treatment counselors in the state’s five prisons. Given a

realistic reduction in recidivism of about 10%, and given other pressing needs the state has, would you recommend appropriating the money or simply deny the request without taking it to the committee?

How have Martinson’s (1974) conclusions stood up over the past 30 years? Gendreau and Ross (1987) reviewed a number of studies of treatment programs and concluded, “It is downright ridiculous to say that ‘Nothing works.’ . . . Much is going on to indicate that offender rehabilitation has been, can be, and will be achieved” (p. 395). Others have stated that properly run community-based programs could result in a 30% to 50% reduction in recidivism (Van Voorhis, Braswell, & Lester, 2000), although on the basis of major literature reviews, reductions in the 10% to 20% range are more realistic expectations (Cullen & Gendreau, 2001). A “success rate” is the difference in recidivism between a treatment group and a control group. A review of studies from prison, jail, probation, and parole settings conducted by Pearson, Lipton, Cleland, and Yee (2002) found that 55.7% of the subjects in treatment groups did not reoffend, compared with 43.3% of control group subjects. This difference translates into an average 22.3% decrease in offending for treatment group members ( $55.7 - 43.3 = 12.4/55.7 = 22.3$ ). Although there are still plenty of failures, if treatment programs managed only half this success rate, the financial and emotional savings to society would be truly enormous.

Lipsey and Cullen (2007) reviewed numerous studies of a variety of correctional intervention programs conducted from 1990 to 2006 and concluded that treatment works moderately well in reducing recidivism. Lipsey and Cullen believed that the biggest problem in offender treatment is not that “nothing works” but rather that correctional systems do not use the available research to determine what works—and then implement it. Rather, they tend to rely on convenience (“Who is available and what methods do they use?”), custom (“We’ve always done it this way and see no reason to change”), and ideology (“Criminals are scumbags; why waste time and money on them?”).

## Evidence-Based Practices

### LO 14.2 State the principles of evidence-based practices.

Moving from the medical model to the just deserts/risk management model in corrections did not mean the death of the rehabilitation goal, but terms such as *assessment* and *programming* have replaced medical terms such as *diagnosis* and *treatment*. The main concern of corrections is to reduce the risk offenders pose to society, not to improve offenders’ lives.

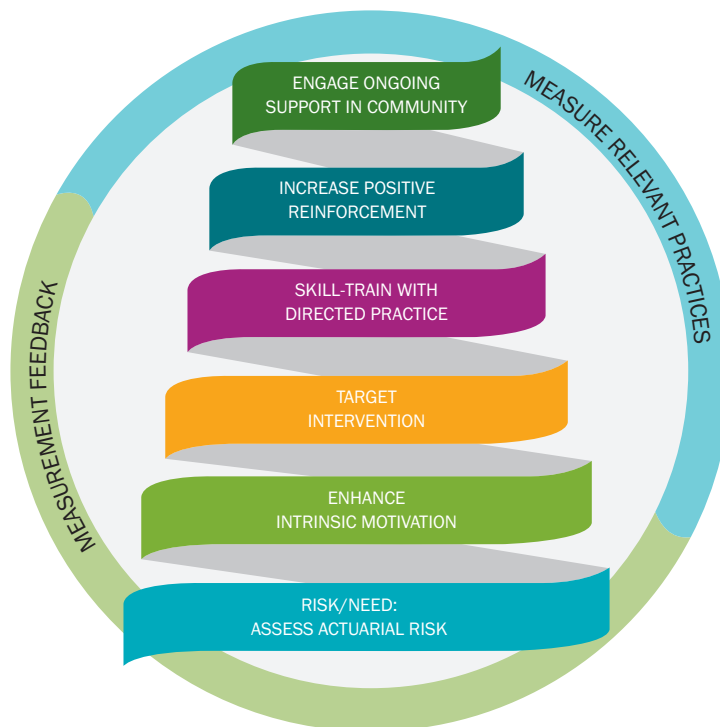
Of course, the two goals are not incompatible; if more offenders can be taught to walk the straight and narrow, the risk of community members' being victimized by them is reduced proportionately. Even though programs are run on a financial shoestring, prison officials like programming because it keeps inmates busy and out of trouble. Inmates also like it because it gives them something to do outside of their cells and looks good on their parole board records.

The movement to a “what works” frame of mind has resulted in the most progressive agencies moving to **evidence-based practices (EBP)**. EBP simply means that in order to reduce offender recidivism, corrections must implement practices that have consistently been shown by rigorous empirical assessment to be effective in that endeavor. Extensive research has identified the following eight principles of evidence-based programming as formulated by the National Institute of Corrections and illustrated in Figure 14.1:

**Evidence-based practices (EBP):** Movement in which in order to reduce recidivism, corrections must implement practices that have consistently been shown to be effective.

■ **FIGURE 14.1** Integrated EBP Model Illustrated

Source: Crime and Justice Institute at Community Resources for Justice (2009).



1. **Assess actuarial risk/needs:** Assessing offenders' risk and needs (focusing on dynamic and static risk factors and criminogenic needs) at the individual and aggregate levels is essential for implementing the principles of best practice.
2. **Enhance intrinsic motivation:** Research strongly suggests that “motivational interviewing” techniques, rather than persuasion tactics, effectively enhance motivation for initiating and maintaining behavior changes. Motivational interviewing is a method of prompting behavior change by helping clients explore and resolve discrepant thinking, that is, the ambivalent feelings of wanting, and not wanting, to change. The task of the counselor is to facilitate and engage intrinsic motivation on

the assumption that if people can resolve the ambivalence themselves, they will value it more than if it is resolved by others, and they will develop a “can do” attitude.

### 3. Target interventions

- a. **Risk principle:** Prioritize supervision and treatment resources for higher risk offenders.
- b. **Needs principle:** Target interventions to criminogenic needs.
- c. **Responsivity principle:** Be responsive to temperament, learning style, motivation, gender, and culture when assigning to programs.
- d. **Dosage:** Structure 40% to 70% of high-risk offenders’ time for 3 to 9 months.
- e. **Treatment principle:** Integrate treatment into full sentence/sanctions requirements. Take a proactive approach to treatment using cognitive-behavioral therapy.

4. **Skill-train with directed practice:** Provide evidence-based programming that emphasizes cognitive-behavior strategies and is delivered by well-trained staff.

5. **Increase positive reinforcement:** Apply four positive reinforcements for every one negative reinforcement for optimal behavior change results.

6. **Engage ongoing support in natural communities:** Realign and actively engage prosocial support for offenders in their communities for positive reinforcement of desired new behaviors.

7. **Measure relevant processes/practices:** An accurate and detailed documentation of case information and staff performance, along with a formal and valid mechanism for measuring outcomes, is the foundation of EBP.

8. **Provide measurement feedback:** Providing feedback builds accountability and maintains integrity, ultimately improving outcomes.

#### Risk, needs, and responsivity

**(RNR) model:** A treatment correctional model that maintains that offenders and the community are better served if offenders’ risks for reoffending and their needs (their deficiencies, such as lack of job skills) are addressed in a way that matches their developmental stage.

**Risk principle:** A principle that refers to offenders’ probability of reoffending and maintains that those with the highest risk should be targeted for the most intense treatment.

**Needs principle:** A principle that refers to an offender’s prosocial needs, the lack of which puts them at risk for reoffending, and that suggests these needs should receive attention in program targeting.

**Responsivity principle:** A principle maintaining that if offenders are to respond to treatment in meaningful and lasting ways, counselors must be aware of their different developmental stages and learning styles and offenders need to be treated with respect and dignity.

**Actuarial data:** Data relating to what has actually occurred and been recorded over many thousands of cases. Evidence-based treatment modalities are based on actuarial data.

## Risk, Needs, and Responsivity (RNR) Model

Taking a closer look at some of these principles, the psychosocial assessment of offenders typically begins with the **risk, needs, and responsivity (RNR) model**. The RNR model is the premier treatment model in corrections today in the United States and in many other countries (Ward, Melser, & Yates, 2007). The **risk principle** refers to an offender’s probability of reoffending, and those with the highest risk are targeted for the most intense treatment (“dosage” under Principle 3). The **needs principle** refers to offenders’ needs, the lack of which puts them at risk for reoffending, and suggests that these needs receive high priority. The **responsivity principle** maintains that if offenders are to respond to treatment in meaningful and lasting ways, counselors must be aware of their different development stages, motivation, and learning styles as well as their need to be treated with respect and dignity (Andrews, Bonta, & Wormith, 2006). The crux of these three principles is that we can no longer rely on “one size fits all” models, and treatment must be tailored to individual offenders’ risks and needs.

## Offenders’ Risks and Needs

Offenders’ risks and needs are assessed by two separate scales: one for risk and one for needs. These scales are used to make predictions about offenders’ success/failure based on **actuarial data** (Principle 1), that is, what has actually occurred and been recorded over many



thousands of cases. It has been found time and time again across many professions that decisions made on the basis of actuarial statistical norms trump decisions based on the insight of individuals the great majority of the time (Andrews et al., 2006). **Offender risk** refers to the probability that a given offender will reoffend and thus the threat they pose to the community. This is assessed by assigning numerical scores to the scale according to the extent that the offender evidences factors known to correlate with recidivism. Risk factors are either static or dynamic. *Static risk factors* are those that cannot change (gender, age, ethnicity, and other background variables). *Dynamic risk factors* (e.g., substance abuse, attitudes, values, behavior patterns) are factors that are targeted for change.

**Offender needs** refer to deficiencies in offenders' lives that hinder their making a commitment to a prosocial pattern of behavior. Scores on the risks and needs sections of the scale tend to be highly correlated—offenders with high risk tend to have high needs. Table 14.1 identifies and describes risks and dynamic needs that must be addressed; note that identifying needs mirrors the identification of risk. The other principles of EBP are either self-explanatory or addressed elsewhere in this book.

**Offender risk:** The probability that a given offender will reoffend and thus the threat that they pose to the community.

**Offender needs:** Deficiencies in offenders' lives that hinder their making a commitment to a prosocial pattern of behavior.

**TABLE 14.1** Major Risk and/or Need Factors and Promising Intermediate Targets for Reduced Recidivism

| FACTOR                         | DYNAMIC NEED   | RISK  |
|--------------------------------|--|---|
| History of antisocial behavior | Early and continuing involvement in a number and variety of antisocial acts in a variety of settings   | Build noncriminal alternative behavior in risky situations.   |
| Antisocial personality pattern | Adventurous, pleasure seeking, weak self-control, restlessly aggressive  | Build problem-solving skills, self-management skills, anger management, and coping skills.  |
| Antisocial cognition           | Attitudes, values, beliefs, and rationalizations supportive of crime; cognitive emotional states of anger, resentment, and defiance; criminal versus reformed identity | Reduce antisocial cognition, recognize risky thinking and feeling, build up alternative less risky thinking and feeling, adopt a reform and/or anticriminal identity. |
| Antisocial associates          | Close association with criminal others and relative isolation from anticriminal others; immediate social support for crime   | Reduce association with criminal others; enhance association with anticriminal others.  |
| Family and/or marital          | Two key elements are nurturing and/or caring and monitoring and/or supervision   | Reduce conflict, build positive relationships, enhance monitoring and supervision.  |
| School and/or work             | Low levels of performance and satisfaction in school and/or work   | Enhance involvement, rewards, and satisfactions.  |
| Leisure and/or recreation      | Low levels of involvement and satisfaction in anticriminal leisure pursuits  | Enhance involvement, rewards, and satisfactions.  |
| Substance abuse                | Abuse of alcohol and/or other drugs  | Reduce substance abuse; reduce the personal and interpersonal supports for substance-oriented behavior; enhance alternative to drug abuse.                            |

Source: Andrews et al. (2006, p. 11). Reprinted with permission of SAGE Publications.

### Cognitive-behavioral therapy

**(CBT):** A counseling approach that tries to address dysfunctional cognitions, emotions, and behaviors in a relatively short time through goal-oriented, systematic procedures using a mixture of operant psychology, cognitive theory, and social modeling theory.

## Cognitive-Behavioral Therapy

### LO 14.3 Explain the principles of cognitive-behavioral therapy.

The therapeutic concepts and methods that proponents of the RNR model find most useful in addressing offender risks and needs are cognitive-behavioral (Ward et al., 2007). Most of today's programming consists of **cognitive-behavioral therapy (CBT)**. CBT is an approach that tries to solve dysfunctional cognitions, emotions, and behaviors in a relatively short time through goal-oriented, systematic procedures and has been called "the most overtly 'scientific' of all major therapy orientations" (McLeod, 2003, p. 123). CBT combines the principles of operant psychology, cognitive theory, and social learning theory. Operant psychology asserts that behavior is determined by its consequences (rewards and punishments). Cognitive theory asserts that at a more proximal level, self-defeating behaviors are the result of unproductive thought patterns relating to our history of rewards and punishments (Wilson, Bouffard, & Mackenzie, 2005). We can do nothing about past experiences, but we can do something to put the way we think about those things into proper perspective. Finally, social learning theory is a sociological view of socialization that asserts behavior is learned by modeling and imitation as well as by our history of rewards and punishments.

Ellis (1989) claimed that the great religious leaders of the past were cognitive-behavioral therapists because they were trying to get people to change their behavior from self-indulgence to temperance, from hatred to love, and from cruelty to kindness by appealing to their rational long-term self-interest. The common message imparted by religion is the need for personal change and the rewards that such change brings with it: "Do these things and you will feel good about yourself now, and you will be eternally rewarded." This is what CBT tries to do: change offenders' antisocial and self-destructive behavior into prosocial and constructive behavior by changing the way offenders think and by showing them it is in their best interests to do so.

The first lesson of CBT is that criminals think differently from the rest of us. Yochelson and Samenow (1976) and Samenow (1999) pioneered treatment theories based on challenging criminal thinking errors when they realized that modalities based on "outside circumstances" theories did not work. The task is to understand how criminals perceive and evaluate themselves and their world so that we can change them. Criminal thinking is destructive; it lands offenders in trouble with family, friends, employers, and the criminal justice system. Habitual offenders tend to perceive the world in fatalistic fashion, believing that there is little they can do to change the circumstances of their lives. To illustrate this fatalism and other criminal thinking patterns, Sharp (2006) cited a cartoon in which one of the characters named Calvin says,

I have concluded that nothing bad I do is my fault. . . . I'm a helpless victim of countless bad influences. An unwholesome culture panders to my undeveloped values and it pushes me into misbehavior. I take no responsibility for my behavior. I'm an innocent pawn of society. (p. 3)

Criminals think like Calvin in the context of a society where many people prefer to claim victimhood rather than personal responsibility ("McDonald's made me fat," "cigarette companies made me smoke," etc.). Many mainstream criminological theories locate the blame for crime on external factors such as poverty and peer pressure rather than on allowing criminals the dignity of owning responsibility for their behavior. Criminals are eager to jump on authoritative pronouncements that excuse their behavior, and defense lawyers are equally quick to argue them in court. All of this reinforces the patterns of criminal denial that treatment providers find so frustrating (Sharp, 2006; Walsh & Stohr, 2010).

Challenging and changing maladaptive thought patterns takes on a central role in treatment as corrections workers strive to impress on offenders that whatever influences external factors may have on behavior, before they can affect behavior they need to be evaluated by individuals. The frustrations we experience do influence our behavior, but the important thing is not their presence but rather whether we deal with them constructively or destructively. The task of correctional workers is to teach criminals to stop blaming outside circumstances for their problems, how to take responsibility for their lives, and how to deal constructively with adversity.

CBT methods are used to address issues relating to self-control, victim awareness, relapse prevention, critical reasoning, and anger control (Vanstone, 2000). CBT literally “exercises the thinking areas of the brain and thereby strengthens the [neuronal] pathways by which the thinking brain influences the emotional brain” (Restak, 2001, p. 144). Receive a high enough “dosage” of CBT, and it can literally reorganize the brain’s wiring patterns (Vaske, Galyean, & Cullen, 2011). A number of brain imaging studies show that CBT changes brain processes exactly the way that drugs such as Prozac do (Linden, 2006). A systematic review of brain imaging studies revealed neurobiological changes in people undergoing CBT. These studies show that CBT modifies the brain circuits involved in the regulation of negative emotions and fear extinction in treatment subjects. In short, CBT is able to change dysfunctions of the brain (Porto et al., 2009). However, these studies have been conducted only with individuals with problems such as depression, anxiety, and obsessive-compulsive disorder, for which patients, unlike most criminals, are intensely motivated to overcome their problems.

## Substance Abuse Programming

**LO 14.4** Discuss the options for substance abuse programming and the effectiveness of each.

Alcohol is at the same time our most popular and most deadly way of drugging ourselves. Police officers spend more than half of their law enforcement time on alcohol-related offenses. One third of all arrests (excluding drunk driving) in the United States are for alcohol-related offenses, about 75% of robberies and 80% of homicides involve a drunken offender and/or victim, and about 40% of other violent offenders in the United States were drinking at the time of their offenses (Mustaine & Tewksbury, 2004).

Alcohol is a very powerful and addictive drug and is the biggest curse of the criminal justice system despite the system’s current obsession with illegal drugs. Illegal drug use presents almost as big a problem, with about 67% of state prisoners and 56% of federal prisoners being regular drug users prior to their imprisonment (Seiter, 2005). Clearly, mind-altering substances, both legal and illegal, are strongly associated with criminal behavior, and as such the tendency of many criminals to overindulge in them must be addressed by correctional agencies.

Substance abuse problems are extremely difficult to treat because individuals most at risk for becoming addicted share many of the same traits associated with chronic criminal behavior, with many of these traits being strongly genetic (Vaughn, 2009). For instance, alcoholism researchers divide alcoholics into two types: Type I and Type II. Type II alcoholics start drinking and using other drugs earlier, become more rapidly addicted, and exhibit many more character disorders, behavior problems, and criminal involvement, both prior and subsequent to their alcoholism, than Type I alcoholics (Crabbe, 2002). Genetic researchers maintain that genes are much more heavily involved in Type II alcoholism than in Type I alcoholism (Crabbe, 2002).



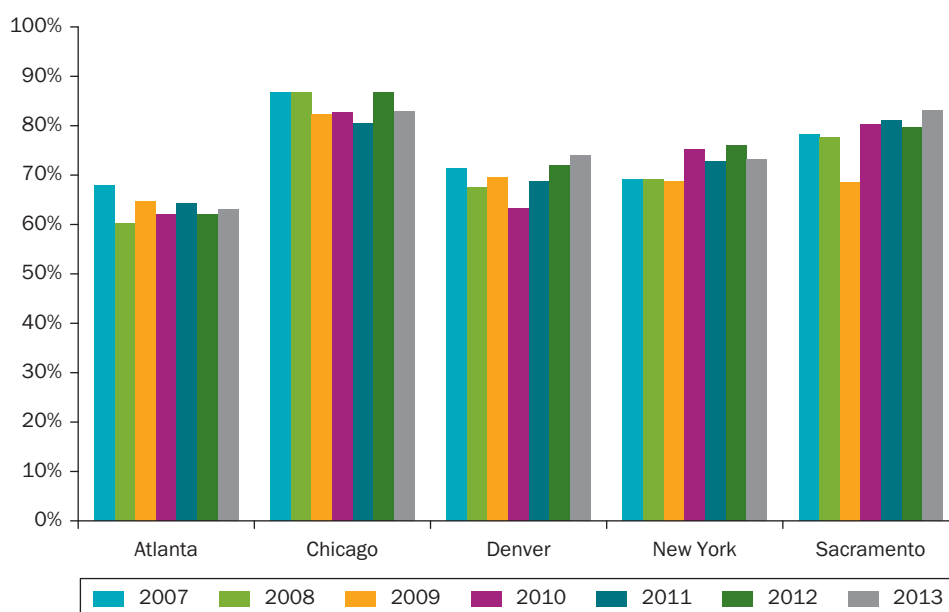
**Photo 14.1** Substance abuse often contributes to poor decision making and criminal engagement for inmates.

It has been shown that drug addiction and criminality are part of a broader propensity to engage in many forms of deviant and antisocial behavior (Fishbein, 2003; Vaughn, 2009). The now defunct U.S. government's Arrestee Drug Abuse Monitoring (ADAM) program collected urine samples from arrestees across the country to test for the presence of drugs. Figure 14.2 shows the percentage of adult arrestees in five large U.S. cities who tested positive for illicit drugs over a 6-year period. These are the latest data available, but data from previous ADAM publications show roughly similar percentages from a number of other large U.S. cities, so we can be assured that they are little different in any year. The numbers show that illicit drug abuse is clearly strongly *associated* with criminal behavior, but the association is not necessarily a *causal* one. A large body of research indicates that drug abuse does not appear to *initiate* a criminal career, although it does increase the extent and seriousness of one (Menard, Mihalic, & Huizinga, 2001). In other words, research seems to point to the fact that chronic drug abuse and criminality are part of a broader tendency of some individuals to engage in a variety of deviant and antisocial behaviors. Numerous studies have shown that traits characterizing antisocial individuals, such as conduct disorder, impulsiveness, and psychopathy, also characterize people with drug addictions (Fishbein, 2003; McDermott et al., 2000). The large body of research indicating a strong genetic vulnerability to alcoholism and drug addiction helps explain why many millions who drink and/or experiment with drugs do not descend into the hell of addiction and why others are “sitting ducks” for it (Walsh, Johnson, & Bolen, 2012).

**FIGURE 14.2** Percentage of Arrestees Testing Positive for Drugs in Five U.S. Cities, 2007–2013

Source: Office of National Drug Control Policy (2014).

\*Differences between that year and 2013 are significant at the .05 level or less.

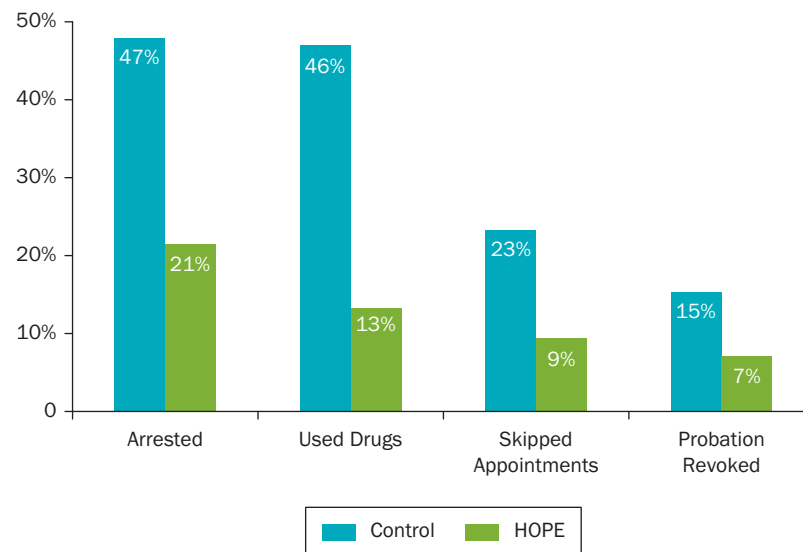


## Drug Treatment With Swift Consequences for Failure: Hawaii's HOPE Program

The state of Hawaii has a drug treatment program highly touted by the National Institute of Justice (2012) called Hawaii's Opportunity Probation With Enforcement (HOPE). The results of this program are based on 493 drug-using probationers with an elevated risk for violating probation, two thirds of whom were randomly assigned to the HOPE program, with the rest being assigned to regular supervision. The program emphasizes a “no non-sense” delivery of both treatment and “swift and certain” punishment for violations. HOPE probationers are more closely monitored for drug use and other violations than control probationers. Figure 14.3 shows that this program had very positive results after 12 months. For instance, HOPE participants were 55% ( $47 - 21 = 26/47 = 55.3\%$ ) less likely to be arrested and 72% less likely to have used drugs. This experiment needs to be repeated in other locations with larger samples, and if results of any further studies come close to Hawaii's, there is real cause for optimism.

**FIGURE 14.3** Comparison of Outcomes Between HOPE and Control Probationers

Source: National Institute of Justice (2012).



## Therapeutic Communities

**Therapeutic communities (TCs)** are residential settings for drug and alcohol treatment that use the community spirit generated by the influence of peers and various group processes to help individuals overcome their addiction and develop effective social skills. Most such communities offer long-term (typically 6–12 months) residence, in which opportunities for attitude and behavioral change operate on a hierarchical model, whereby treatment stages reflect increased levels of personal insight and social responsibility. The interactions of the residents are both structured and unstructured, but they are always designed to influence attitudes and behaviors associated with substance abuse (Litt & Mallon, 2003). TCs provide dynamic “mutual self-help” environments, in which residents transmit and

### Therapeutic communities

**(TCs):** Residential communities providing dynamic “mutual self-help” environments and offering long-term opportunities for attitude and behavioral change and the learning of constructive, prosocial ways of coping with life.





## Perspective From a Practitioner

MARGARET JACKSON, DRUG TREATMENT SPECIALIST

**Position:** Drug treatment specialist

**Location:** Phoenix, Arizona

**Education:** BS in criminal justice, Northern Arizona University; MA in criminal justice administration, Boise State University; drug and alcohol counseling courses, Rio Salado University

### How long have you been a drug treatment specialist?

I have been a drug treatment specialist for 3 years; I have been in the correctional field for a total of almost 5 years.

### The primary duties and responsibilities of a drug treatment specialist:

My primary duties are to provide drug abuse treatment to inmates in the federal prison system. I provide individual and group counseling and therapy to drug- or alcohol-addicted inmates incarcerated in the federal prison system. The Federal Bureau of Prisons provides a voluntary but criteria-based program called Residential Drug Abuse Program (RDAP), a 9-month (minimum of 500 hours of direct treatment) modified therapeutic community (TC). I provide clinical services using CBT techniques and introduce community as method to the inmates and develop a working system of a therapeutic community. The first step in working with inmates in this process is to determine their eligibility to receive counseling/therapy; one of the tools I use for this is a psychosocial assessment. If an inmate is eligible for treatment, I will use the psychosocial assessment to create an individual treatment plan for the inmate. Once eligibility and an assessment for treatment have been conducted, a team of three other therapists and I are responsible for providing residential treatment to the offenders. The inmates are assigned a series of workbooks and attend daily meetings. I construct the inmates' individual therapeutic treatment plans, reviews, and recommendations for further treatment on release from federal prison.

### The qualities/characteristics that are most helpful for one in a probation or parole career:

- Be fair and consistent
- Have good judgment

- Be aware of population at hand
- Know your craft well
- Be reliable
- Be a team worker
- Be able to communicate with multiple agencies
- Be attentive to detail when writing reports and preparing inmate charts

### In general, a typical day for a drug treatment specialist in corrections:

Monday through Friday, the TC starts with a morning meeting called "community meeting." This meeting is an inmate-run self-help meeting, with drug treatment staff supervising. During the treatment meetings and groups, inmates are learning and demonstrating therapeutic language and actions in a public "community" setting. After community meeting, inmates are separated into their appropriate phase groups, on the basis of the date they entered treatment. RDAP, similarly to other TCs, uses a hierarchical form for the 9 to 12 months inmates are in treatment. Program participants typically have 3.5 hours of treatment daily; during this time, I am working directly with the inmates providing therapy. Therapy consists of using their RDAP workbooks and a facilitator guide to treat the inmates' addictions and behaviors. In RDAP, there are three phases of treatment, with new inmates entering treatment every 3 months (approximately 25 inmates per phase). With inmates phasing in and out of treatment, creating individual treatment plans, review of progress, and treatment summaries of each inmate are my responsibility to maintain and develop.

### My advice to someone either wishing to study, or now studying, criminal justice to become a practitioner in this career field:

It would be important to understand the population for which you are providing therapy. In this regard, being an intern in a correctional setting would be beneficial to someone becoming a practitioner because of the nature of working inside a prison. Finally, practice development and presentation of lectures and seminars to groups as this will be a skill used often when providing group therapy.

*Note:* Opinions expressed in this article are those of the author and do not necessarily represent the opinions of the Federal Bureau of Prisons or the Department of Justice.

reinforce one another's acceptance of and conformity with the highly structured and stringent expectations of the TC and of the wider community. Life in a TC is extremely hard on people who have never experienced any sort of disciplined expectations from others, and as a consequence there are many dropouts; some residents withdraw voluntarily, and others are removed by TC staff for noncompliance.

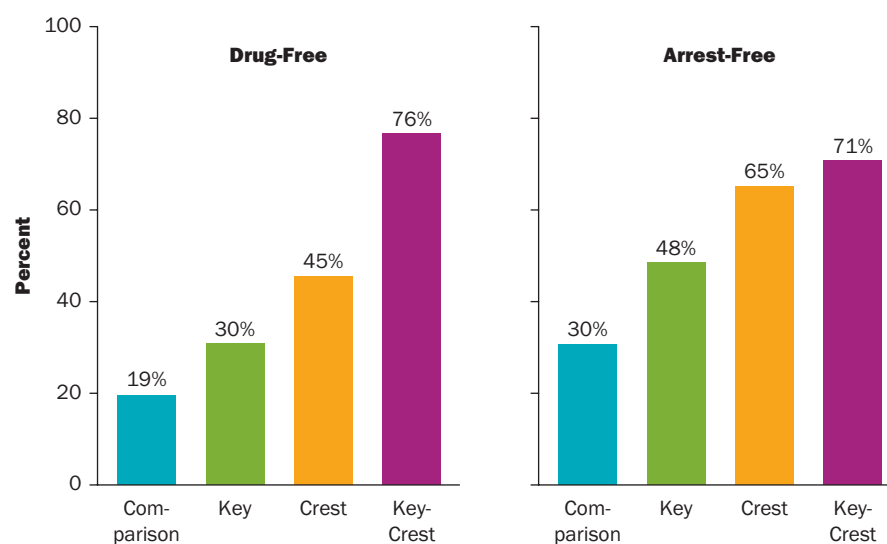
TCs also operate within prison walls and are most often known as **residential substance abuse treatment (RSAT)** communities. These RSATs typically last 6 to 12 months and are composed of inmates in need of substance abuse treatment and whose parole dates are set to coincide with the end of the program. RSAT inmates are separated from the negativity and violence of the rest of the prison and are provided with extensive cognitive-behavioral counseling and attend Alcoholics Anonymous and Narcotics Anonymous meetings as well as many other kinds of rehabilitative classes (Dietz, O'Connell, & Scarpitti, 2003). Most participants in these RSATs are positive about most aspects of their experience, with most inmates listing cognitive self-change programs as the most positive aspect of their treatment (Stohr, Hemmens, Shapiro, Chambers, & Kelly, 2002). Dietz et al. (2003) also found that most inmates in prison-based TCs were positive about the programs and that they had significantly fewer rule violations and rates of grievance filing than inmates in the general population.

An interesting program implemented in a prison setting and transitioning into the community is the Delaware Multistage Program (Mathias, 1995). In the beginning stage, offenders spend 12 months in a prison-based TC called Key; in Phase 2, they spend 6 months in a prerelease TC called Crest; and finally, in Phase 3, they receive an additional 6 months of counseling while on parole or in work release. Figure 14.4 compares drug use and arrest outcomes for offenders completing all phases (Key, Crest, and Key-Crest) 18 months after release from prison and a comparison group of offenders who did not participate in any of the phases. We see that 76% of Key-Crest members remained drug free, and 71% remained arrest free, compared with only 19% and 30%, respectively, of the control group. Put another way, 3 times as many Key-Crest participants were drug free after 18 months than the comparison group, and 2.37 times more Key-Crest participants were arrest free than the comparison group.

**Residential substance abuse treatment (RSAT):** A community that typically lasts 6 to 12 months and is composed of inmates in need of substance abuse treatment and whose parole dates are set to coincide with the end of the program. RSAT inmates are separated from the negativity and violence of the rest of the prison and are provided with extensive cognitive-behavioral counseling and attend Alcoholics Anonymous and Narcotics Anonymous meetings as well as many other kinds of rehabilitative classes.

■ **FIGURE 14.4** Delaware Multistage Correctional Treatment Program 18 Months After Release From Prison

Source: Mathias (1995).



Inciardi, Martin, and Butzin (2004) followed this same group 5 years after release from prison. As expected, the greater the time lapse between treatment and evaluation, the greater the relapse rate. Over the 5-year period, it was found that 71% of drug abusers who went through a residential treatment program and who received additional treatment on release (the Key-Crest group) had relapsed and 52% had been rearrested. However, the contrast with the comparison group still makes the Key-Crest program impressive. Among the comparison subjects, 95% had relapsed and 77% had been rearrested. This study shows how extremely difficult it is to battle addiction even after a long period of forced abstinence and extensive psychosocial treatment.

## Pharmacological Treatment

Leshner (1998) informed us that addiction is a brain disease and a “prototypical psychobiological illness, with critical biological, behavioral, and social context elements” (p. 5). Because **addiction** is basically a brain chemistry problem, pharmacological treatment with drug antagonists (drugs that work by blocking the effects of other drugs) stabilizes brain chemistry and renders people with addictions more receptive to psychosocial counseling. Proponents of pharmacological treatment emphasize that it is not a magic bullet and that it augments, not replaces, traditional treatment methods.

There are many drug antagonists, but only one has claimed success in curbing both alcohol and drug addiction—naltrexone. Naltrexone reduces craving among alcohol- and drug-abstinent addicts and reduces the pleasurable effects of those who continue to use (Schmitz, Stotts, Sayre, DeLaune, & Grabowski, 2004). A study of people with drug addictions on federal probation found that about one third of probationers who received naltrexone plus counseling relapsed, as opposed to two thirds of those who received only counseling (Kleber, 2003). A new drug called Vivitrol is a slow-release version of naltrexone (it releases the drug into the bloodstream slowly over a period of days) that controlled clinical trials have shown to be effective not only in preventing drug abuse relapse but also in diminishing the cravings that drive it. “Vivitrol is the first non-narcotic, non-addictive, extended release medication approved for the treatment of opioid dependence—marking an important turning point in our approach to treatment” (Volkow, 2010).

Proponents of pharmacological treatment claim that the effects of such treatment are more effective and immediate and wonder why the correctional system is relatively uninterested in pharmacological treatment (Kleber, 2003). It could be that corrections professionals received their training primarily in the social sciences, and there are some who have genuine ethical problems regarding chemical treatments for behavioral problems. However, according to the National Institute on Drug Abuse (2006), while medication is important for treating many people with addictions because medication helps them to stabilize their lives, it must be combined with counseling.

## Anger Management

### LO 14.5 Explain the function and effectiveness of anger management programs.

A central component of many treatment programs in corrections is anger management, particularly in violent, drug, and sex offender treatment programs. **Anger management programs** consist of a number of CBT techniques by which someone with problems in controlling anger can learn the cause and consequences of anger to reduce the degree of anger and avoid anger-inducing triggers. Anger is often central to violent criminal behavior, and given the frustrations resulting from being in custody or under correctional supervision in the community, it often leads to violence. Anger is a normal and often adaptive human

**Addiction:** A psychobiological illness characterized by intense craving for a particular substance.

**Anger management programs:** Programs that consist of a number of techniques by which someone with problems in controlling anger can learn the causes and consequences of anger to reduce the degree of anger and avoid anger-inducing triggers.

feeling that is aroused when we feel we have been offended or wronged in some way. The tendency to undo that wrongdoing by retaliating is motivated by anger and is adaptive in the sense that it warns those who have offended or wronged you that you are not to be treated that way. The problem, however, is not anger per se but rather the inability of some to manage it. These individuals often become excessively angry over minor real or imagined slights to the point of rage.

Anger management classes are taught in groups and designed to increase offenders' responsibility for ownership of their emotions (anger) and their reactions to them. Offenders often become frustrated and angry because they think that life is not fair to them ("I'm a victim of circumstances") and the world owes them a living. This kind of destructive thinking must be challenged and replaced by individual responsibility. Anger management classes also teach such skills as rational thinking ("Did this person really mean to diss me?") to increase offenders' ability to react to frustration and conflict in assertive rather than aggressive ways and to develop effective communication skills (Jolliffe & Farrington, 2009). There appears to be a growing consensus that properly conducted anger management programs reduce inmate violence and reduce violent recidivism for program completers versus control subjects by about 8% to 10% (Jolliffe & Farrington, 2009; Serin, Gobeil, & Preston, 2009). Although this seems like a small return on a corrections investment, even an 8% reduction in violent offenses prevents much needless suffering and millions of dollars in expenses.

## ? Ethical Issue

### WHAT WOULD YOU DO?

You are the chief psychologist in the largest state prison in the state. One of your counselors hasn't recommended that any inmate be put on a program of prerelease in 6 months, and you get a lot of complaints about his "hard-nosed" attitude. The counselor tells

you that he operates from a therapeutic theory with a "no nonsense, no excuses" framework and that he's not going to let these "trailer trash out of here until they've completed their full minimums." What would be your response to this counselor?

## Sex Offenders and Their Treatment

### LO 14.6 Describe the special treatment modalities applied to sex offenders.

The American public harbors all sorts of very negative images of sex offenders. We lock them up under civil commitment orders after they have completed their prison terms, and all 50 states have sex offender registration laws (Talbot, Gilligan, Carter, & Matson, 2002). However, the term *sex offender* defines a very broad category of offenders ranging from "flashers" to true sexual predators, just as property offenders include everyone from petty shoplifters to career burglars. At least 98% of all sex offenders are either in the community on probation or parole or will be some day (Carter & Morris, 2002), making the issue of sex offender treatment of the utmost importance.

However, some particularly heinous sex offenders may never be released from confinement. The particularly notorious example is that of NuShawn Williams (aka Shytee Johnson). NuShawn was convicted in 1997 of having unprotected sex with numerous girls and women, including a 13-year-old girl, in drugs-for-sex encounters, knowing that he was HIV positive. He was sentenced to 12 years in prison, but at the completion of his sentence

the state of New York refused to release him under its Mental Hygiene Law. In 2013, a jury determined that he was a dangerous sex offender with a cognitive abnormality and should be detained. In 2014, the New York State Supreme Court ordered that Williams be committed to a secure treatment facility as a sexual predator. According to Dennis Vacco, who was the New York attorney general when the state legislature passed the Mental Hygiene Law, “It was designed to keep the most vicious sexual predators from ever getting back out on the street, and in this instance, I couldn’t think of anybody who is more eligible for the application of this statute than Nushawn Williams” (Ewing & Dudzik, 2014). Whatever your thoughts are about sex offenders in general, Williams had demonstrated his wanton disregard for others, knowingly infecting his victims with a deadly virus. Such mental hygiene laws have created a category of individuals defined as “abnormal” who may be punished indefinitely for what they might do (Williams admitted that he would further offend) if released. Some people consider these laws to be wrong and discriminatory. Others laud them as protecting the public from predatory and dangerous individuals who can almost be guaranteed to offend again if released. What do you think?

Notwithstanding true predators such as Williams, sex offenders, as a category of offenders are actually less likely to reoffend than any other category. Looking at many years of British crime statistics, it was found that burglars are the most likely of all criminals to be reconvicted (76%) within 2 years of being released from prison, with sex offenders being the least likely (19%) (Mawby, 2001, p. 182). A review of 61 studies of sex offender recidivism found an average rate of reconviction for sexual crimes of 13.4% over a 4- to 5-year follow-up (Hanson & Bussiere, 1998). Perhaps the most instructive study of recidivism conducted to date was a study by the Bureau of Justice Statistics, whose researchers tracked 9,691 sex offenders released from prisons in 15 states in 1994 (Langan, Schmitt, & Durose, 2003). Over the 3-year period of follow-up, sex offenders had a lower rearrest rate (43%) than 272,111 non-sex offenders released at the same time in the same states (68%). Rearrest rates included all types of crimes and technical violations, such as failing to register as a sex offender and missing appointments with their parole officers. Only 3.5% of the sex offenders were reconvicted of a new sex crime during the follow-up period. Because recidivism rates include only those offenders who have been caught, in common with other types of offenders, the above figures should be considered bare minimums.

State-of-the-art treatment of sex offenders must include a thorough assessment of psychosocial problem areas, deviant arousal patterns, and polygraph (“lie detector”) assessment (Marsh & Walsh, 1995). Deviant arousal patterns are assessed by a device called a penile plethysmograph (PPG), which measures blood flow in the penis (the level of the swelling of the penis) when exposed to deviant sexual images. These measures are then compared with measures in response to consensual adult sexual images. If, for instance, a man achieves a 10% erection viewing non-deviant heterosexual pornography involving adults, but achieves a 75% erection viewing porn involving young boys, we know where his sexual tastes are—the penis finds it difficult to lie. Of course, the PPG is far from foolproof.

Counselors are in agreement that effective treatment is impossible until the full extent of the offender’s sex offending history is acknowledged by them and known to treatment personnel (Walsh & Stohr, 2010).



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**Photo 14.2** Group work is often used in offender programming both inside and outside of correctional facilities.



But sex offenders are notorious for hiding their sexual histories, so polygraph assessment is needed to access their sexual histories. In comparing self-reports before and after polygraph testing across 2 decades of research, it was found that child molesters underreport the number of sex crimes they have committed by about 500% and overreport their own childhood sexual victimization (the “I’m a victim too” excuse) by about 250% (Hindman & Peters, 2001). The polygraph therefore may be seen as a very useful tool if the first goal of treatment is to honestly acknowledge one’s sexual history.

Unlike treatment for other problems in corrections, there has been a great deal of interest in the pharmacological treatment of sex offenders. Numerous researchers have concluded that optimal treatment (following a thorough psychosocial and physiological assessment) combines the biomedical and cognitive-behavioral approaches (Walsh & Stohr, 2010). The biomedical approach involves so-called **chemical castration** with a synthetic hormone called Depo-Provera, which is also sold as a method of female birth control. Depo-Provera works in men to reduce sexual thoughts, fantasies, and erections by drastically reducing the production of testosterone, the major male sex hormone. Depo-Provera prevents testosterone production, and it is testosterone activating a part of the brain called the hypothalamus that controls the male sex drive. Depriving the brain of testosterone allows offenders to concentrate on their psychosocial problems without the distracting fantasies and urges (Marsh & Walsh, 1995).

Following the State of California in 1997, several states now mandate chemical castration (“castration” is reversible on withdrawal from the drug) for repeat offenders. Not all sex offenders should be treated with this drug, because there are sometimes negative side effects, and treatment can be provided only by a medical doctor. However, a number of reviews of the literature from Europe and America show that antiandrogen drugs such as Depo-Provera result in recidivism rates for repeat rapists and child molesters that are remarkably low (in the 2%–3% range) when compared with offenders treated with only psychosocial methods (Maletzky & Field, 2003). A review of 11 meta-analyses covering 353 separate studies from 1943 to 2009 found that surgical castration had the strongest effect on lowering recidivism, followed by chemical castration (Kim, Benekos, & Merlo, 2016). Insight-oriented therapies such as psychoanalysis had essentially no effect, while CBT had a significant effect, but much less if not combined with some form of antitestosterone medication.

#### **Chemical castration:**

A biomedical treatment for chronic sex offenders in which a synthetic hormone called Depo-Provera is administered. Depo-Provera works in men to reduce sexual thoughts, fantasies, and erections by drastically reducing the production of testosterone, the major male sex hormone.

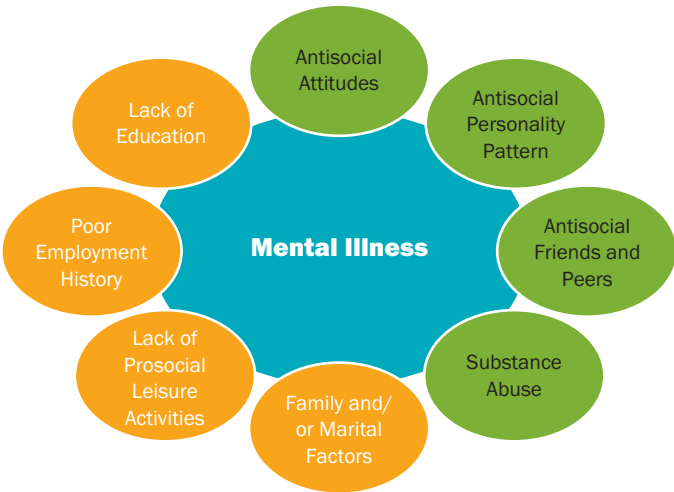
## Offenders With Mental Illnesses

**LO 14.7** Discuss the special problems the criminal justice system has dealing with offenders with mental illnesses.

As graphically indicated in Figure 14.5 from the Council of State Governments Justice Center (2014), mental illness lurks behind many factors that are linked to criminal behavior. These types of offenders under correctional supervision present a particularly difficult treatment problem. People with addictions to alcohol and drugs ingest substances that alter the functioning of their brains in ways that interfere with their ability to cope with everyday life, although their brains may be normal when not artificially befuddled. They also have brains that limit their capacity to cope, but that limitation is intrinsic to their brains, not attributable to intoxicating substances. Studies around the world have found that people with mental illnesses (mostly schizophrenics and manic depressives) are at least 3 to 4 times more likely to have convictions for violent offenses than persons in general (Fisher et al., 2006). Most of them, however, are more likely to be victims than victimizers, and many of their problems are made worse through abuse of alcohol and/or drugs (Walsh & Yun, 2013). It is because of their substance abuse and greater propensity for violence, in addition to mental hospital deinstitutionalization, that people with mental illnesses are overrepresented in the correctional system.

■ **FIGURE 14.5** Mental Illness Lurks Behind Many Other Problems

Source: Council of State Governments Justice Center (2014).



Torrey and his colleagues (2014) told us that there were an estimated 356,268 inmates with severe mental illness in prisons and jails in the United States in 2012 and approximately 35,000 patients with severe mental illnesses in psychiatric hospitals. In addition, the Bazelon Center for Mental Health Law (2008) estimated that 16% of individuals on probation or parole have some form of mental illness. This state of affairs results from the deinstitutionalization of all but the most seriously ill patients from mental hospitals that occurred during the 1960s. For instance, there were 559,000 persons in U.S. mental hospitals in 1955; in 2000 (with a U.S. population about 80% greater), there were only 70,000 (Gainsborough, 2002), and as we have seen, it was down to 35,000 in 2012.

Deinstitutionalization of people with mental illnesses from mental hospitals has shifted to their institutionalization in jails and prisons, which in essence has resulted in the criminalization of mental illness (Lurigio, 2000). Table 14.2 presents the highlights of a Bureau of Justice Statistics report on the mental health problems of prison and jail inmates (James & Glaze, 2006).

**TABLE 14.2** Prevalence of Mental Health Problems Among Prison and Jail Inmates

| SELECTED CHARACTERISTICS            | PERCENTAGE OF INMATES IN . . . |         |                     |         |
|-------------------------------------|--------------------------------|---------|---------------------|---------|
|                                     | STATE PRISON                   |         | LOCAL JAIL          |         |
|                                     | WITH MENTAL PROBLEM            | WITHOUT | WITH MENTAL PROBLEM | WITHOUT |
| Criminal record                     |                                |         |                     |         |
| Current or past violent offense     | 61%                            | 56%     | 44%                 | 36%     |
| Three or more prior incarcerations  | 25%                            | 19%     | 26%                 | 20%     |
| Substance dependence or abuse       | 74%                            | 56%     | 76%                 | 53%     |
| Drug use during month before arrest | 63%                            | 49%     | 62%                 | 42%     |

| SELECTED CHARACTERISTICS                           | PERCENTAGE OF INMATES IN . . . |         |                     |         |
|--|--------------------------------|---------|---------------------|---------|
|  | STATE PRISON                   |         | LOCAL JAIL          |         |
|  | WITH MENTAL PROBLEM            | WITHOUT | WITH MENTAL PROBLEM | WITHOUT |
| Family background                                  |                                |         |                     |         |
| Homelessness during year before arrest             | 13%                            | 6%      | 17%                 | 9%      |
| Past physical or sexual abuse                      | 27%                            | 10%     | 24%                 | 8%      |
| Parents abused alcohol or drugs                    | 39%                            | 25%     | 37%                 | 19%     |
| Charged with violating facility rules <sup>a</sup> | 58%                            | 43%     | 19%                 | 9%      |
| Physical or verbal assault                         | 24%                            | 14%     | 8%                  | 2%      |
| Injured in a fight since admission                 | 20%                            | 10%     | 9%                  | 3%      |

Source: James and Glaze (2006).

a. Includes items not shown.

Offenders with mental illnesses in jails and prisons are often victimized by other inmates, who call them “bugs” and exploit them sexually and materially (stealing from them), although most inmates seek to avoid them. These types of offenders are also punished by corrections officers for behavior that, although not pleasant, is symptomatic of their illness. These behaviors include such things as excessive noise, refusing orders or medication, self-mutilation, and poor hygiene. Obviously, correctional facilities are not the ideal place for providing mental health treatment, even assuming the staff are aware who people with mental illnesses are among their charges. Few correctional or probation/parole officers have any training about mental health issues, and one nationwide survey of probation departments found that only 15% of them operated special treatment programs for people with mental illnesses (Lurigio, 2000). It is not that anyone expects correctional workers to become treatment providers, because that’s a job for psychologists and psychiatrists. However, they should be expected to recognize signs and symptoms of mental illness, know how to effectively deal with situations involving people with mental illnesses, and have a basic understanding of the causes of and treatment for the major mental illnesses.

Treatment for people with mental illnesses in prisons and jails consists primarily of antipsychotic and antidepressive medication, typically administered by a nurse. Many individuals, especially paranoid schizophrenics, often refuse to take their medication. It is permissible in a number of states to forcibly treat inmates with mental illnesses if they meet state-specific criteria, which is typically if inmates pose a risk to others or themselves. This is determined on a case-by-case basis by a review committee composed of correctional and medical professionals (Torrey et al., 2014). Of course, just because such procedures

are authorized by the state does not mean they are used or that the inmate will be treated. According to Torrey and his colleagues (2014),

Given the many legal difficulties in providing treatment for individuals with serious mental illness in prisons and jails, it is not surprising that many of them, including those who are most severely ill, receive no treatment whatsoever. This leaves corrections officers with few options for controlling mentally ill inmates' psychotic, often violent behavior. One option is seclusion, which often makes the inmate's mental illness worse. (p. 10)

What is both morally and fiscally required of the criminal justice system is to provide offenders with mental illness the support and structure they need to avoid further criminal behavior. One of the ways this is attempted is through mental health courts modeled on drug courts in use across the nation (and discussed in Chapter 4). As with drug courts, mental health courts seek to divert offenders from jails and prisons by facilitating their access to services, providing intensive judicial monitoring, and promoting collaboration among the court, probation, mental health service, and social service providers.



## Comparative Corrections

### OFFENDER TREATMENT

The treatment of criminal offenders in modern Western nations is fairly uniformly centered on the RNR model. Countries that care little about the civil rights and treatment of their citizens in general obviously are not very concerned about the humane treatment of their prisoners. A modern country concerned with rehabilitation, but with some different assumptions about how to achieve it, is Japan. A large cultural difference between Japan and Western nations such as the United States is that whereas the latter emphasizes individualism and a great degree of personal freedom, the Japanese emphasis is on collectivism and individual conformity to community norms. Unlike the general tendency in American criminology to shift the blame for crime away from the individual and onto "society," the Japanese place responsibility for criminal behavior squarely on the shoulders of the individuals who commit it.

Western CBT counselors tend to play down introspection (gaining insight into one's self) as too time-consuming and believe that criminals need the participation and direction of counselors in order to benefit. Japanese correctional counselors, on the other hand, see their role as a kindly guide on the edge rather than as a trainer at the center providing definite directions (Bindzus, 2001). One type of counseling favored in Japanese corrections is called Naikan, which means "inside looking" and is designed to get offenders to see themselves as others see them. According to Kanazawa

(2007), inmates undergoing Naikan therapy will spend many hours alone asking themselves three questions: "What has my mother (and other significant persons in my life) done for me?"; "What have I done for her (and other significant persons in my life) in return?"; and "What problems have I caused her (and other significant persons in my life)?" (p. 762). Thinking about these things is supposed to generate feelings of remorse, sadness, empathy, guilt, and consciousness of responsibility. The counselor will enter the offender's cell every hour or so to check on progress. Only if the offender displays tendencies to blame outside forces for their criminal behavior, or has not adequately explored the questions, will the counselor intervene to clarify.

Could such introspective methods work with Western prisoners who exist in cultures that seem to have little respect for individual responsibility? Bindzus (2001) expressed "doubts about the physical and psychological ability of European prisoners to stick through NAIKAN for a one-week period, with daily sessions up to sixteen hours" (p. 266). What works in one cultural context might not work in others for a variety of reasons. Of course, inmates require some sort of concrete help as well as introspective self-knowledge even in Japan. Indeed, Eskridge (1989) listed a large number of vocational training courses available in Japanese penal institutions, ranging from auto mechanics, to seamanship, to welding.

## SUMMARY

**LO 14.1** Define rehabilitation and explain why it is imperative.

- Although the vast majority of the correctional budget is spent on security, rehabilitation efforts have not completely ceased. The success rates of many rehabilitation programs are low, but outcomes are significantly better for treated offenders than for similarly situated offenders who did not receive treatment.

**LO 14.2** State the principles of evidence-based practices.

- Successful treatment programs implement evidence-based practices (EBP) that proceed by conducting a thorough assessment of offenders' risks and needs and then address these issues using cognitive-behavioral techniques along with the principles of responsivity.

**LO 14.3** Explain the principles of cognitive-behavioral therapy.

- Cognitive-behavioral therapy (CBT) is a counseling approach that tries to address dysfunctional cognitions, emotions, and behaviors in a relatively short time through goal-oriented, systematic procedures using a mixture of operant psychology, cognitive theory, and social modeling theory.

**LO 14.4** Discuss the options for substance abuse programming and the effectiveness of each.

- Treatment is best accomplished for severe substance abusers in therapeutic communities, although even then there is a significant percentage of failure. Much of this failure has to do with the intense psychological

craving for the substance of abuse, which is something that may be significantly alleviated by certain alcohol or drug antagonists such as naltrexone.

**LO 14.5** Explain the function and effectiveness of anger management programs.

- Anger management programs consist of a number of techniques by which someone with problems in controlling anger can learn the causes and consequences of anger to reduce the degree of anger and avoid anger-inducing triggers.

**LO 14.6** Describe the special treatment modalities applied to sex offenders.

- Similar observations were made about sex offenders who have difficulty in refraining from acting out their sexual fantasies with inappropriate targets. Repeat sex offenders treated with Depo-Provera combined with cognitive-behavioral counseling have much lower recidivism rates compared with offenders treated only psychologically.

**LO 14.7** Discuss the special problems the criminal justice system has dealing with offenders with mental illnesses.

- These individuals are represented in the correctional system by a factor of at least 3 or 4 times their prevalence in the general population. The correctional system is not equipped to deal with these incapacitated people, who are often victimized by other jail or prison inmates or disciplined by corrections officers for exhibiting behavior that is basically part of their mental disease syndrome.

## KEY TERMS

Actuarial data 350

Addiction 358

Anger management programs 358

Chemical castration 361

Cognitive-behavioral therapy (CBT) 352

Evidence-based practices (EBP) 349

Needs principle 350

Offender needs 351

Offender risk 351

Residential substance abuse treatment (RSAT) 357

Responsivity principle 350

Risk, needs, and responsivity (RNR) model 350

Risk principle 350

Therapeutic communities (TCs) 355



## DISCUSSION QUESTIONS

1. In your estimation, are the time, effort, and finances spent on rehabilitative efforts worth it given the low success rates? Would longer periods of incarceration better protect the public?
2. Cognitive-behavioral approaches stress thinking and rationality. How about emotions? Do you think that human behavior is motivated more by emotions than by rationality?
3. Given the greater involvement of genes in Type II alcoholism, in what ways would you treat Type II alcoholics differently from Type I alcoholics if you were a treatment provider? How about if you were a probation or parole officer?
4. Should all sex offenders undergo Depo-Provera treatment? What are the ethical problems of such invasive treatment?
5. Discuss the various component parts of the responsivity principle.



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# 15 Corrections in the 21st Century

## TEST YOUR KNOWLEDGE

Test your current knowledge about the likely future of corrections in this country by answering the following questions. Check your answers on page 389 after reading the chapter.

1. On the basis of the chapters you have already read in this book, what do you think are likely to be trends in corrections in the next several years?
2. Decarceration is likely related to state budgets. (True or false?)
3. Privatization of corrections leads to greater professionalism of staff. (True or false?)
4. Privatization of corrections leads to more safety and security for inmates, staff, and communities. (True or false?)
5. Correctional work is fully professionalized. (True or false?)
6. Resource use and waste production by correctional institutions should be a serious concern for communities. (True or false?)

## LEARNING OBJECTIVES

Upon completion of this chapter, the reader should be able to:

- 15.1** Discuss the mistakes of the past that should inform the future.
- 15.2** Describe decarceration and what is causing it.
- 15.3** Discuss the importance of professionalization to the field of corrections.
- 15.4** Explain the value of relationships in corrections.
- 15.5** Identify the potential problems with privatization.

## CAN WE CURE CRIMINALITY?

Alex DeLarge is the product of a society in which no one takes personal responsibility for their actions and of a culture that panders to our basest human instincts. He is the leader of a gang that is into what they call ultraviolence, and Alex engages in all kinds of crime, especially sadomasochistic rape. Betrayed by his associates, he is eventually caught by police after raping and murdering a woman. Two years into his sentence for murder, Alex volunteers as a test subject for an experimental treatment based on aversion therapy. Alex is given drugs and forced to watch violent images while the drugs make him nauseated. After 2 weeks of “therapy,” Alex has become incapable of fighting back against a man who attacks him. The mere thought of violence and sex now make him retch violently. He is then released from prison as “successfully cured” in order to reduce the financial burden of imprisonment. Only when he finally freely chooses to desist from crime does he do so.

Some of you may recognize this as the story line of the dystopian futuristic novel *A Clockwork Orange* (Burgess, 1962/2001). The book is about an effort to “cure” criminality and its ultimate failure, as Alex reverts to his former self after the cure wears off. Another book, *Walden Two* (Skinner, 1948/2005), this one based on a futuristic utopian society, contains a similar theme. One of the characters in the book explains the goal of such a society:

You see, we want to do something—we want to find out what’s the matter with people, why they can’t live together without fighting all the time. We want to find out what people really want, what they need in order to be happy, and how they can get it without stealing it from somebody else.

Efforts to “do something” this time were based on the principles of behaviorist psychology—principally on positive reinforcement instead of aversion therapy.

(Continued)

(Continued)

Both books resonate with the perpetual problem of corrections: effectively identifying and treating the sources of criminality. We still need to “allot a portion of the virgin soil . . . as the site of a prison,” as Nathaniel Hawthorne predicted in the opening vignette in Chapter 1. The financial cost of prisons is prohibitive, but we will always need them, barring some “miracle cure” awaiting us in the distant future. The great physicist Niels Bohr once said, “Prediction is very difficult, especially about the future,” so we do not speculate about that here. James Carville, campaign manager for Bill Clinton’s successful presidential campaign, coined the following phrase: “It’s the economy, stupid.” Economic considerations have and always will drive corrections policy. We enact mandatory sentencing laws that imprison people who perhaps should not be imprisoned when state budgets allow, and then we release prisoners early who should not be released when state coffers are low. This generates public anger as victims’ tormentors are released, thus renewing calls to “get tough” on crime, and the whole process recycles. Perhaps legalizing drugs and saving the prisons for folks like Alex is the only solution at present. These are some of the things to think about as you read this last chapter.

## Introduction: Learning From the Past So That We Have Hope for the Future

**LO 15.1** Discuss the mistakes of the past that should inform the future.

Americans have a tendency to revisit old themes, efforts, and programming every generation or so—even when such endeavors were clear failures and rejected by generations past. Perhaps we keep retrying old endeavors because of the media influence that reduces very complex problems to brief and simplistic messages, and consequently we do not understand that despite the new packaging and marketing, we have been there and done that before. Or maybe it is hand-in-glove collusion by the media and politicians in this reductionism of complex topics and collective memory loss.

Whatever the reason, we do not seem to learn much from the experiences of those who have come before us, at least as that is related to correctional practice. Or, more accurately, we certainly could learn more from our past than we have! It is an oft-cited truism, courtesy of the philosopher Santayana, that those who do not know their history are doomed to repeat it. This adage bears repeating, as it clearly applies here regarding correctional programs, operation, and practice.

### Punitive Policies Yield Overuse of Corrections

To illustrate this point, all we need to do is consider the efforts of the past almost 4 decades that are declining in popularity—namely, the drug war, mandatory sentencing, supermax prisons, and abandonment of treatment programming. Spurred by punitive sentiments that swept the political, social, and economic systems, the statutes, declarations, and practices that derived from these efforts profoundly changed corrections as Americans experienced it (Cullen, Jonson, & Stohr, 2014; Whitman, 2003). First, they vastly increased the use of all forms of corrections in this country. Our imprisonment rate (just for prisons, not including jails) was stabilized at about 125 persons per 100,000 residents for 50 years (1920–1970) until the drug war, mandatory sentences, and other punitive policies increased it (Ruddell, 2004). At the end of 2009, this number had risen to 502 persons per 100,000 residents, or more than 4 times the imprisonment rate of that 50-year period. Notably, by 2018 the number of people held in prison had decreased, yielding a rate of 431



per 100,000, but this still represented a 345% increase in the rate of incarceration from 1970 to 2018 (Carson, 2020, p.1).

A comparable steady and swift increase in the use of jails has occurred since punitive policies were put in place. The number of persons incarcerated in America's jails more than quadrupled, or increased by 405%, from 183,988 in 1980 to 738,400 inmates at midyear 2018 (this is, however, down from the peak of 780,200 at midyear 2007; Minton & Zeng, 2015, p. 2; Zeng, 2020, p. 1).

Similarly astounding increases can be found in the use of probation and parole because of punitive practices. From 1980 to 2009, the number of people on probation more than tripled, with an increase of 376% (from 1,118,097 in 1980 to 4,203,967 in 2009; Glaze, Bonczar, & Zhang, 2010, p. 2), although it decreased to 328% when the 1980 and 2016 figures for probation (3,673,100) are compared (Kaeble, 2018, p. 1; Kaeble, Maruschak, & Bonczar, 2015, p. 2). Likewise, the number of persons on parole nearly quadrupled during this time period (from 220,438 in 1980 to 456,000 in 2016) because most people in prisons and jails do eventually return to their communities (Kaeble, 2018, p. 1; Kaeble & Bonczar, 2017). In sum, what all of these numbers and Figure 15.1 indicate is that because of punitive policies, the use of corrections—prisons, jails, and community corrections—has increased by almost unimaginable numbers from 40 years ago, and although it is no longer increasing, the total number of those under some form of correctional supervision is still well beyond historical norms.

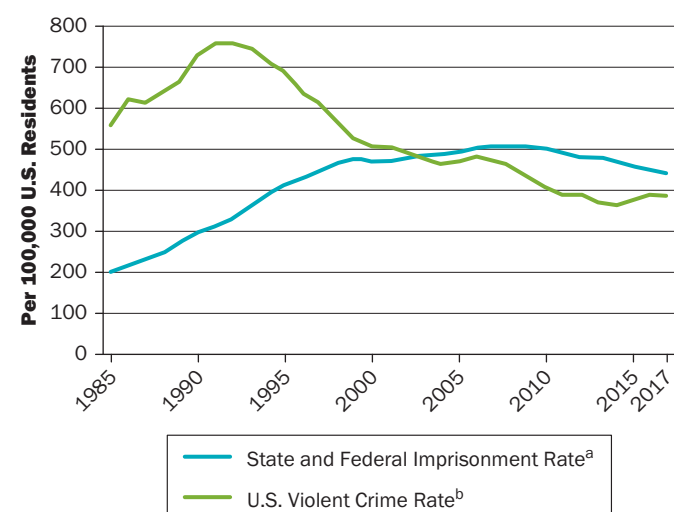
Yet as best we can tell, we do not have proportionately more crime these days than at any other period in our history (see Figures 15.1 and 15.2). In fact, on the basis of victimization reports, it appears that by 2018 (the latest year for which we have data), we had one of the lowest rates of victimization since the National Crime Victimization Survey began in 1973 (Morgan & Oudekerk, 2019, p. 1; Morgan & Truman, 2018, p. 2). As indicated in Figures 15.1 and 15.2, violent crime by adults and juveniles did increase in the 1980s and through the early 1990s, but it has since dropped precipitously (with a 2018 modest increase in simple assaults and robberies), though clearly the use of incarceration has not mirrored this decrease. Moreover, property crimes have dropped just as consistently and sharply, if not more so (Truman & Rand, 2010; Bureau of Justice Statistics [BJS], 2016; Morgan & Truman, 2018).

In addition, our use of corrections is not in sync with what other countries are doing. We have similar crime rates (Farrington, Langan, & Tonry, 2004), yet our incarceration rate is more than 14 times that of Japan; 5 to 7 times that of France, Canada, China, England, and Wales; and 3 to 4 times that of Saudi Arabia and Chile (Walmsley, 2015). Russia is the only other developed nation that gets close to our incarceration rate, and it is a dictatorship, yet the United States still outpaces that nation with 1.5 times its incarceration rate.

Second, interestingly enough, these punitive policies have not had the effect of increasing sentencing length. The average sentence to prison in state courts in 1992 was 6.5 years, compared with 2.6 years in 2016 (Bonczar, 2011, p. 1; Kaeble, 2018). It is not

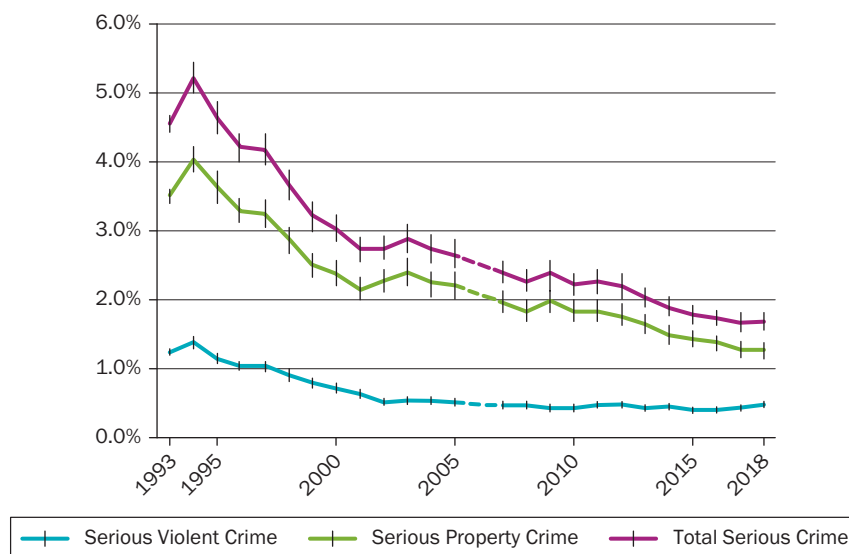
**FIGURE 15.1** U.S. Imprisonment Rate and Violent Crime Rate, 1985–2017

Source: Morgan and Oudekerk (2019). Bureau of Justice Statistics.



■ **FIGURE 15.2** Percentage of U.S. Residents Age 12 or Older Who Were Victims of Total Serious, Serious Violent, and Serious Property Crimes, 1993–2018

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 1993–2018.



clear why sentencing length has decreased over this period of time, especially when more punitive policies were in effect, but more recent decreases may be related to an evolving “penal help” perspective for corrections (see the discussion below about penal help and penal harm). It is also possible that decreased sentence length might be one of those unintended consequences of the overuse of incarceration. The capacity of prisons and jails, along with probation and parole caseloads, has been vastly increased over the past 20 years, but it may not have increased enough to accommodate the numbers of processed felons in the courts. What this means is that even when policies are punitive, courts are forced to adjust their sentences to the lower relative capacity of prisons, and parole boards and judges are pressured to release inmates as prisons and jails fill up.

Third, punitive policies, as discussed in other chapters, have led to an explosion in the number of women and minority group members who are incarcerated or under some form of correctional supervision (Austin & Irwin, 2001; BJS, 2006; Irwin, 2005; Pollock, 2004; Zimring, Hawkins, & Kamin, 2001). Until the current version of the drug war was resurrected—yes, there were others in American history (Abadinsky, 1993)—the proportion of women to men and of racial and ethnic minorities to white people in prisons, in jails, and on parole and probation was somewhat stable (BJS, 2006). Although the numbers of people of color are decreasing in prisons and in jails, the disproportionality in the incarceration of African Americans vis-à-vis white people in particular remains.

Fourth, such policies have favored the use of more isolation, “punishment,” and warehousing to deal with both bulging correctional populations and recalcitrant inmates. The number of supermax facilities exploded, as had the number of supermax inmates, as management of the number of inmates turned to favoring punishment and warehousing over treatment (Irwin, 2005).

As a result of such policies, a fifth outcome has been the abandonment of a core principle of some correctional institutions and practices (e.g., probation, parole, minimum security institutions, work releases)—namely, treatment—based on insufficient evidence. Some

correctional programs and institutions were formulated on the premise that treatment is a major goal of corrections. Although the public has continued to believe this (Applegate, Cullen, & Fisher, 2001), for all intents and purposes, real efforts at treatment—beyond basic Alcoholics Anonymous and Narcotics Anonymous, religious, and GED programs—in prisons, jails, and community corrections received little funding and virtually disappeared in many places from the mid-1970s to the mid-1990s.

Although some of these endeavors and efforts, such as the drug war and mandatory sentencing, continue and even grow in some communities, for the most part scholars and some policymakers have deemed the former a failure and the latter a spectacular waste of money. Furthermore, though the number of supermaxes has grown in the recent past, there is far less hype about their promise of eliciting inmate reform as in previous years. Finally, all indications are that the belief in and embrace of treatment programming—albeit primarily programs that can demonstrate their worth—is on the upswing both in correctional institutions and in the communities. Although all of these changes in attitudes and perceptions are positive, it is frustrating to realize that we knew—or should have known from our own past—that drug wars, mandatory sentencing, isolation, and pure punishment in the form of warehousing are not likely to reduce crime in this country, let alone reform those under correctional control. The long and the short of it is that we should have known better because it had all been tried before.

## Decarceration

### LO 15.2 Describe decarceration and what is causing it.

As indicated in the foregoing, the numbers of persons incarcerated in jails and prisons and supervised on community corrections have been declining recently. By 2017, we had seen 10 years of declines, resulting in a 13% overall decline in the imprisonment rate from 2008 to 2017, a 12% decline in the jail incarceration rate from 2007 to 2017, and an 11% decline in the use of probation (from 2008 to 2016) and mostly increases (as more inmates were released from prisons) in parole for approximately the same time periods (Bronson & Carson, 2019; Kaeble, 2018; Zeng, 2019).

These declines were generally at the state level, not the federal level. We should caution that Attorney General Jeff Sessions called for harsher sentences at the federal level in the spring of 2017, and his replacement, Attorney General William Barr, has since affirmed that direction, so we may see more incarceration in the immediate future. These more recent decreases (and increases in parole) have not been uniform across the states or by region (Glaze & Herberman, 2013). Only in three northeastern states—New York, New Jersey, and Maryland—were these declines a discernable trend over the past decade and a half, though in Illinois, Michigan, Delaware, and Texas, the 2009 declines were preceded by anemic growth rates earlier in the decade (West, Sabol, & Greenman, 2010). Nor have all states experienced such declines. The difference about the time period we are in, however, is that for the first time in a long time, we are seeing some steady, and cumulatively dramatic, declines in the use of corrections.

## Explanations for the Decline in the Use of Incarceration

What might these declines in the use of incarceration be attributed to? Is it possible that declining crime, particularly violent crime, has actually begun to affect the use of prisons in some states? Is it possible that enforcement of the drug war has waned as states have legalized or medicalized marijuana? Eleven states—Alaska, California, Colorado, Illinois,



**Photo 15.1** People passing a state legal marijuana shop sign in downtown Seattle.

Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington—and the District of Columbia had legalized recreational marijuana and most other states had decriminalized or medicalized its use as of spring 2020. In only eight states is its possession and use completely illegal. Has the drug hype as tied to criminality (e.g., the hysteria over crack mothers producing crack babies) receded in the minds of the public, politicians, and criminal justice practitioners? Is it possible, in the case of the northeastern states, that declines are tied to reduced state populations—particularly the reduction of young people, who are the most engaged in street crimes? Could it be that the reduced use of incarceration for some of these states is a consequence

of the recession that hit the United States in 2007 and the resultant declining tax revenues and increased debts faced by states and localities then that made them realize that maybe they can no longer afford the bill for spiraling imprisonment?

We think it is possible that all of these scenarios have some value in explaining the decreased use of incarceration in some states in the past few years and for a few states for the past several years. These declines mean that prison beds are more likely to be reserved for the most serious offenders. This is confirmed by the fact that about 55% of those in prison in the states are violent offenders, perhaps signaling greater attention being paid to them rather than to drug offenders (Bronson & Carson, 2019).

### The Recession and Decreased Use of Incarceration

In 2009, the Pew Center on the States published a report subtitled *The Long Reach of American Corrections* in which the authors made the case that “more prison spending brings lower public safety returns” (Saylor & Iwaszko, 2009, p. 17). The authors argued that over the past 20 years, we have incarcerated too many first-time and nonviolent offenders who never needed to be incarcerated. Doing so has cost us billions of dollars with no collateral decrease in crime, as most of these people either would not reoffend or could have been handled in a much less expensive and intrusive way in the community. Moreover, the more we incarcerate, the less we achieve the ideal of incarcerating the serious repeat offenders (as there are far fewer of these); the more the lower level offenders are “replaced,” leading to greater involvement of more people in crime; and the less likely we are to deter current criminals, given that research does not show that longer sentences deter more effectively. Although Saylor and Iwaszko (2009) acknowledged that the huge incarceration increase was likely responsible for somewhere between 10% and 35% of the decrease in violent crime since the mid-1990s (depending on which researcher you listen to and which model and assumptions they adopt), the authors noted that most of the drop in crime was likely attributable to factors outside of incarceration. It makes no sense financially, they argued, to continue to incarcerate low-level, aging, and less criminogenic offenders.

There are some examples from the recession-era news indicating that some states and localities came to the same conclusion. For instance, Washington State in April 2011 closed the 135-year-old McNeil Island prison because of the need to cut the state’s budget; the cut was projected to save \$12.7 million (Mulick, 2010, p. 1). Likewise, for the first time in state

history, Oregon in October 2010 closed a minimum security facility in order to save the state a projected \$33.8 million (Zaitz, 2010, p. 1). In both these instances, Department of Corrections officials claimed that none of the inmates would be released early because of the closures. In another example from Washington, this time involving the Thurston County Jail and its finances, the county manager declined to open the newly built, \$45 million facility for at least a year, because the county could not afford to staff it or pay for its operation (Hulings, 2010, p. A4). Also the new jail was not needed as much because of the declining jail population in the county, which happened after construction had begun.

Moreover, in a report by the Sentencing Project, Porter (2011) revealed that in 2010, “state legislatures in at least 23 states and the District of Columbia adopted 35 criminal justice policies that may contribute to reductions in prison populations and eliminate barriers to reentry while promoting effective approaches to public safety” (p. 3), such as relaxed parole rules and eligibility, reduced penalties, adoption of ban-the-box laws that delay questions about criminal histories for reentering people from prisons or jails, and reduction in punitive measures for juveniles. Porter noted that developing alternatives to prison contributed to a 20% drop in incarceration from 1999 to 2009 in both New York and New Jersey. She argued that though several of these changes in state policies were made to reduce current and future budgets, they were also made because policymakers were no longer convinced of the efficacy of mass incarceration as a public safety measure (see also Porter, 2016).

In a more recent example, Connecticut has closed three prisons because of the declining prison population in that state (Connecticut Department of Corrections, 2019). In a COVID-19 world where health requirements take their toll on the economies of states and localities, it is likely that more inmates will be released (we have already seen this as of spring 2020) and more correctional institutions might be shuttered.

### Implications of Decarceration and the Need for a Plan of Action

Should these clear indications of 10 years of decarceration turn into a flood of releases—dare we say mass decarceration—there will be, and continue to be, many positive outcomes, such as (a) less incarceration of low-level offenders, resulting in a greater sense of justice for community members; (b) less incarceration of people of color, also resulting in a greater sense of justice for all; (c) fewer tax dollars being devoted to incarcerating people; (d) a reduction in the growth of the corrections–industrial complex, at least at the institution level (see a discussion of the complex later in this section); and (e) more opportunities for people to age out of crime and contribute in a meaningful way to their communities. However, there are likely some negative outcomes of decarceration that could occur if policymakers and correctional officials do not plan appropriately, such as greater unemployment, more low-level crime, and increased use of drugs and alcohol by ex-inmates. There are also likely to be those working in corrections who oppose the closure of correctional institutions and programming, as it will threaten their livelihoods (Garland et al., 2014). Clearly, money will be saved through decarceration, but some of these monies will likely be needed to fund reentry programs in corrections, work and training programs for the decarcerated and unemployed staff in communities, and the expansion of drug and alcohol treatment in communities so that decarcerated people can have the opportunity to rebuild their lives.

### Penal Help Versus Penal Harm

Another explanation for the decreased use of incarceration may be the increased use of treatment programming that addresses the appropriate risk, needs, and responsivity (RNR) levels and types of offenders. As indicated in Chapter 14, there is a well-established science



**Penal harm:** Movement in corrections based on retribution in sentencing and the infliction of greater harm while inmates are under correctional supervision.

**Penal help:** Movement including the reform of state laws to liberalize marijuana use, the repeal of harsh sentences, and the reduction in the use of incarceration coupled with the increase in the use of rehabilitation, restorative justice, and reentry programming. Altogether there has been a societal shift away from penal harm as a guiding principle of corrections.

behind some of the best-formulated and best-implemented programs. There is evidence that these programs may be effectuating a decrease in criminal engagement, further convincing correctional managers that expenditures on programming may be a better bet for reducing crime and costs than is the building of more institutions.

Some scholars have signaled that this shift to treatment over punishment may portend a move away from the **penal harm** movement of the past several decades to an age of reform embodied by the term **penal help** (Stohr, Jonson, & Cullen, 2014). The reform of state laws to liberalize marijuana use, the repeal of harsh sentences, and the reduction in the use of incarceration generally, coupled with the increase in the use of rehabilitation, restorative justice, and reentry programming, all signal a sea change in the nature of the justice system and in corrections in particular. Taken together, they indicate there has been a societal shift toward penal help over penal harm (Garland et al., 2014; Pollock, Hogan, Lambert, Ross, & Sundt, 2012; Stohr et al., 2014; Tucker, 2014b).

## Professionalization

**LO 15.3** Discuss the importance of professionalization to the field of corrections.

As we look to the future, there are a number of problems in addition to the amount of incarceration that should preoccupy those of us concerned about correctional practice. One issue that affects almost all areas of practice is that of professionalism. As indicated in other chapters in this book, the effort to professionalize corrections has not yet yielded consistent fruit around the country. Some correctional institutions and programs have moved to enforce professional standards for their new hires, such as the requirement of a college-level educational background, sufficient training, and pay that is commensurate with job requirements. However, most correctional organizations, perhaps primarily because of a lack of resources, have failed to move in a similar direction.

Yet hiring and keeping a professional staff is key to moving correctional institutions and programs into the 21st century. When correctional practitioners do not have the kind of education that acquaints them with the history, background, concepts, and research regarding corrections, then the correctional organization is simply ill prepared to meet the challenges it faces. Moreover, when turnover is high because training and pay are insufficient, the organization becomes less stable and less equipped to solve problems regarding pressing concerns. Therefore, if we ever hope to move beyond the past and its failed correctional endeavors and perspectives, the ranks of correctional practitioners need to be professionalized.

## Corrections Is a Relationship Business

**LO 15.4** Explain the value of relationships in corrections.

The correctional experience for clients, offenders, inmates, and staff and the success of treatment and probation and parole programming all hinge on the relationships among the people in these organizations. It is often said that the greatest expense for any public service organization is its staff. A collateral expense for correctional institutions and programs is the care of their inmates or clients. Notably, these expenses wax and wane to some degree on the basis of the relationships among the actors. If those relationships are characterized by respect and concern among staff and respect and care (coupled with a healthy degree of control) between staff and clients or offenders, then costly lawsuits, staff turnover, riots, and just general stress that produces discord in the workplace are all less likely.

In his groundbreaking work on less explored and identified types of intelligence—emotional and social—Goleman (1995, 2006, p. 4) argued that scientific research on the

brain indicates that we are “wired to connect” to others, which means that every time we engage with other human beings, we affect, and are affected by, their thoughts and consequently their behavior. Those relationships that are the most prolonged and intense in our lifetimes are most likely to affect us not just socially or emotionally but biologically.

To a surprising extent, then, our relationships mold not just our experience but also our biology. The brain-to-brain link allows our strongest relationships to shape us on matters as benign as whether we laugh at the same jokes or as profound as which genes are (or are not) activated in T cells, the immune system’s foot soldiers in the constant battle against invading bacteria and viruses (Goleman, 2006, p. 5).

Goleman (2006, p. 5) identified a “double-edged sword” in relationships in that those that are positive are healthful, but those that are negative can lead to stress, fear, frustration, anger, and despair—all emotions that can manifest themselves in physical ailments. Of course, correctional environments are chock-full of stressed, fearful, frustrated, angry, and despairing people, and we are not just referring to the inmates here! So this means that unless correctional environments can foster some positive relationships between and among staff and clients or inmates, both will suffer psychologically and physically.

Recognition of the need to provide opportunities for inmates to maturely cope while under correctional supervision (see Chapter 7) would appear to be an acknowledgment that something positive can come out of the decent incapacitation of offenders. Moves to democratize workplaces and give people a voice and choice in their work (as discussed in Chapter 8) may serve to reduce some of the negative emotions associated with working in corrections. More recent attempts to treat rather than just warehouse inmates in institutions and offenders on probation and parole also represent a move to more positive relationships and thus a better future for corrections. As indicated by the findings from the research presented in Chapters 5, 6, 7, 8, 9, and 14, there is reason to believe that some treatment and supervision tactics can work to help offenders as they endeavor to deal with their substance and other abuse issues.

## Privatization

### LO 15.5 Identify the potential problems with privatization.

**Privatization** in corrections is not a new phenomenon. As discussed in the first chapters of this book, transportation and the convict lease system were both based on privatization. The privatization of parts of prison operations (e.g., health care, food service, work programs) continues in many public prisons and jails. And since the 1980s, the number of completely private prisons has grown at both the state and federal levels. Several of those prisons have experienced problems with escapes, violence, staff turnover, inexperienced staff and deficient staff training, brutality and abuse by staff, and inadequate physical facilities (Camp & Gaes, 2002).

**Privatization:** Occurs when services or whole correctional institutions are provided or operated by private businesses or corporations.

## The Profit Motive in Corrections

In her 1973 book *Kind and Usual Punishment: The Prison Business*, Jessica Mitford detailed the misuse of public monies for prisons; instead of improving the diets and opportunities of inmates after the Attica riot (the causes of the riot), for instance, millions of dollars were used by prison officials in New York to purchase riot gear and technology and to hire more staff. Her argument is that closed-off institutions, such as prisons and jails with their relatively powerless inmates, are particularly susceptible to graft and corruption of both the legal and the illegal sort. She noted that state legislatures are particularly susceptible to contributions by private entities that want to do business with corrections.



**Photo 15.2** A for-profit prison, operated by Corrections Corporation of America, houses men awaiting trial on immigration matters.

**Corrections–industrial complex:** Collusion among politicians, business, and criminal justice officials to make money for themselves and their organizations from correctional services, construction, and operations.

Forms of corruption and abuse of monies—the illegal sort of graft—are easy to spot, though they are not always stopped. As Mitford (1973) complained, “Convicts will tell you about profitable deals made with local merchants for supplies in which the warden pockets a handsome rakeoff, unexplained shortages in the canteens, the disappearance of large quantities of food from the kitchen” (p. 172). It is the legally sanctioned graft in corrections, however, whereby money from state legislatures is intended for one type of purchase but is diverted to another—such as the hiring of more administrators rather than the provision of adequate food—that fascinated her and caused her to characterize the operation of public-sector corrections in this country in the 1970s as a “business.” She charged that corrections in many states

were out to make a profit for administrators and their supporters (among vendors and state legislatures) and not to attend to their core mission of holding people decently and securely while assisting them in their reform.

Almost 50 years later, if anything, the operation of corrections in the United States has become even more businesslike in the worst way, with some commentators characterizing the system as the **corrections–industrial complex** (Welch, 2005). In his last speech, President Dwight Eisenhower warned the nation about the development of the *military–industrial complex*, or the collusion among politicians, defense contractors, and leaders in the military regarding the value of war and military spending as a moneymaking and power-generating enterprise for all three (Mills, 1956). Similarly, Welch (2005) argued that corrections has become a similar enterprise among (a) state legislatures, governors, and city and town leaders (politicians); (b) who receive contributions from prison or jail contractors, vendors, and private prison corporations (businesses); and (c) directors and secretaries of corrections, wardens, sheriffs, and probation and parole managers (criminal justice officials) who participate in contracting with business. The criminal justice officials contract with the private-sector businesses not necessarily because they provide better services or even less expensive services than the public sector but because they are pressured to do so by the politicians who appoint or select and fund them. In other instances, the officials receive kickbacks themselves in terms of remuneration or jobs when they leave public service for the private sector.

## The Walnut Grove Correctional Facility

The perfect example of how this kind of collusion among politicians, business, and criminal justice officials in this corrections–industrial complex can lead to gross injustices can be found in a small Mississippi town. In the town of Walnut Grove, an hour’s drive east of Jackson, was the Walnut Grove Correctional Facility for boys and young men (it incarcerated youth up to age 22 to increase the number and, thus, the profit the private corporation could make). It was the largest juvenile and young adult prison in the country, housing 1,200 juveniles and young people. The state of Mississippi paid the private corporation GEO Group and, as of 2012, the private prison company Management and Training Corporation to operate the prison, which they did for a profit (Shahani, 2011). Before August 2010, the

prison was operated by another private prison corporation, Cornell Companies; after this, it was operated by GEO Group and finally by Management and Training Corporation. The prison was under a federal consent decree for violating inmate rights beginning in 2012 and was finally closed in 2016 (Williams, 2016).

In a two-part investigation of the Walnut Grove facility by National Public Radio (NPR), Burnett (2011) found that violence was set up and encouraged by the correctional officers. They also found that sexual abuse of the young male inmates by female officers was rife. In 2011, the prison was under investigation by the U.S. Department of Justice (DOJ) and was being sued on behalf of 13 inmates by the Southern Poverty Law Center (SPLC) and the American Civil Liberties Union (ACLU). The NPR report told of the following:

“When we began investigating conditions inside this facility and seeing how these kids were living with the beat downs and the sexual abuse and violence and corruption, it became a no-brainer. It became something we had to do,” said Sheila Bedi, the lead attorney on the case and deputy legal director for the SPLC. (Burnett, 2011, p. 1)

After 2012, the prison continued to experience problems, including two riots in 2014, rapes of inmates, denied access to medical care, and a host of other issues (Williams, 2016). According to Burnett (2011), the crux of the problem at Walnut Grove was the correctional officers: There were too few of them, there was little supervision of them, some were gang members themselves, and others were inclined to abuse the inmates either physically or sexually. The national average of officers to inmates for juveniles is 1:10, but the 2009 audit at Walnut Grove determined that the ratio was 1:60 there. As staff are the most expensive item for any correctional entity to fund, cutting staff and their salaries is one way to ensure profits for a moneymaking enterprise such as this prison (the GEO Group, for instance, is traded on the New York Stock Exchange and made \$1 billion in 2010; Burnett, 2011, p. 1). According to the audit done in 2009, “There were three inmate injuries a day. In the first 6 months of 2010 there was more than one fight a day, an assault on staff at least every other day and nine attempted suicides” (Burnett, 2011, p. 1).

NPR found after a review of public records that the warden and deputy wardens at Walnut Grove were receiving supplemental checks from the federal government for administering educational grants for the juveniles in the amount of \$2,500 to \$5,000 when they were already paid by GEO (Burnett, 2011, p. 1). The town of Walnut Grove also “made money” out of the existence and growth of the prison; the mayor of Walnut Grove (who was later convicted of a sex offense for taking an inmate to a local hotel for sex) claimed that it had funded the local police department. “It’s been a sweet deal for Walnut Grove,” Sims [the mayor] said. Indeed, every month, the prison [paid] the town \$15,000 in lieu of taxes—which comprise[d] nearly 15 percent of its annual budget” (Burnett, 2011, p. 1). In addition, a vending company owned by the mayor had 18 machines inside the prison. Moreover, the correctional authority that sent the Walnut Grove prison its grant money was given \$4,500 per month by GEO. Left unexplored in the investigation is the question of why the Mississippi state legislature and governor’s office authorized the private operation of Walnut Grove in the first place and why they didn’t shutter it until 2016 despite knowing of the abuses that had been occurring there for years (Williams, 2016).

### Idaho’s Own Private Prison

One of the largest private prison corporations, the Corrections Corporation of America (CCA; now known as CoreCivic), which had earnings of \$1.7 billion in 2012, was voluntarily removed as the operator of a private medium security prison it had been operating near Boise, Idaho, since the 1990s (Boone, 2013b). CCA made \$29 million from this Idaho



contract alone (Boone, 2013a). CCA stands accused of defrauding taxpayers by severely understaffing positions that it was paid for and was under investigation by the Federal Bureau of Investigation for this and the level of violence at the prison. As a result, inmates have claimed that they were less safe. Counselors and case managers were used to fill security positions, thus making it difficult for them to help inmates with programming or reentry planning. The Idaho Department of Corrections reportedly knew of this understaffing for years because its own auditors reported on it. There were lawsuits from inmates claiming understaffing and excessive violence as a result. In fact, the Idaho Department of Corrections auditor found that the CCA prison had nearly 3 times the number of inmate-on-inmate assaults as other publicly operated prisons in the state. As a result of an inmate lawsuit brought by the ACLU regarding the staffing and violence, CCA settled and promised more staff. CCA also reported that the mandatory staff positions were filled, but it turns out it was falsifying those documents, and those staff positions were vacant. This problem came to light only because an Associated Press request for staffing and payroll information from CCA spurred the company to confess the truth to the Idaho Department of Corrections. On Friday, January 3, 2014, Idaho governor Butch Otter, a big fan of prison privatization and someone who once suggested that more private prison operators should be able to operate in the state, ended the contract with CCA, saying, “We had better hopes for outcomes in privatization” (Russell, 2014, p. B1). In May 2016, a federal appellate court upheld a contempt of court ruling against CCA, which means that the company will need to pay “higher than normal” attorneys’ fees to the ACLU for its defense of inmates who brought suit because of the falsified staffing reports by CCA (Boone, 2016, p. 3A).

## ? Ethical Issue

### ■ WHAT WOULD YOU DO?

You are an auditor for a state public-prison system, and it is your job to make sure that all of the prisons in that system, both public and private, are using state funds appropriately and operating as they should be. Your office has filed more than one negative audit report in your state on a private prison that appears to have an abnormally low staff-to-inmate ratio. In those reports, you have noted that this understaffing has likely contributed to the large number of inmate-on-inmate and inmate-on-staff assaults and the relatively large number of medical and psychiatric complaints filed

by inmates at this prison. Unfortunately, despite your arguments that the problems in your reports should be attended to, your supervisors have paid them little mind, as the political atmosphere in the state is very pro-privatization. You know that a lawsuit has been filed by staff at the prison alleging that the understaffing endangers both them and inmates, and the staff attorneys have contacted you, though they are unaware of the content of your audit reports. Should you talk to them? If so, what will you tell them? What do you think are the likely outcomes of your action?

## The Extent of Privatization and Its Problems

Currently private adult correctional institutions hold 8% of 27 state and federal inmates (21 states have no private prisons), more than 5% of the jail population and 40% of juveniles in residential placement (i.e., detention or juvenile prisons and halfway houses; Bronson & Carson, 2019, p. 16; Gaes, 2019, p. 1; Kirkham, 2013; The Sentencing Project, 2017). BJS data indicate that the number of adult prison facilities decreased by 5% from 2016 to 2017, and that included a 19% decrease in federal inmates in private facilities (Bronson & Carson, 2019, pp. 1, 16). The absolute number of people housed in private prisons decreased by 8%



since 2012, when six states (Arkansas, Kentucky, Maine, Michigan, Utah, and Wisconsin) ended their contracts with private prisons because of concerns regarding “safety and cost-cutting” (The Sentencing Project, 2017, p. 2).

In a surprising reversal of a 30-year trend toward greater privatization of corrections, and in recognition of the recent history of abuses and scandals involving private prisons, the DOJ under the Obama administration released a statement in the summer of 2016 indicating that the federal government would begin the process of ending the use of private prisons, claiming that they are “less safe and effective” than public prisons (Zapotosky & Harlan, 2016, p. 1). This decision was reversed, however, by the DOJ under the Trump administration in February 2017 (Zapotosky, 2017). Moreover, with proclamations made about the need to return to punitive policies by Trump administration attorney general Sessions, and now Barr, as well as the building of immigration correctional facilities by private companies, decreases in the use of privatization at the federal level, at least in the short term, are not likely to continue. Notably, neither of these decisions to use or not use private prisons at the federal level affects what happens in the states.

Although private prisons do not cost less to operate—in fact, they might be more expensive when all costs are accounted for, such as lawsuits and monitoring and assistance from publicly funded police and fire departments—they are easier and faster to build because they do not require the authorization of bonds from state legislatures (Camp & Gaes, 2002; The Sentencing Project, 2017; U.S. General Accounting Office, 1996). In a study of private prisons at the state and federal level by Camp and Gaes (2002), the researchers, who were employees of the Federal Bureau of Prisons at the time, found that “the private sector experienced significant problems with staff turnover, escapes and drug use” (p. 427). For instance, in 1999, secure facility private prisons experienced 18 escapes, while out of all of the Federal Bureau of Prisons facilities, a system that was larger than all of the private secure prisons combined, there was only one escape that year (p. 433). The researchers concluded, “The failures that produce escapes or illegal drug use can result from problems in policy and procedures, in technology, and in staff capabilities” (p. 445). In a more recent review of the research on private prisons, Gaes (2019) noted that recidivism appears to be higher among those who did their time in private prisons (though he cautioned that the research in this area is not as strong as it could be).

As the two recent examples of private prison failures provided in this section—the Walnut Grove facility in Mississippi and the CCA prison in Idaho—would indicate, when profit competes with professional staffing and the just operation of prisons and jails, profit considerations often win out, with dire consequences for inmates and staff in such facilities.

## Concluding Thoughts

It is a stunning realization that much of the future looks like the past, but it is true in a way. Current trends in corrections mimic those themes we laid out in the early chapters of this book. However, as has been demonstrated by the research presented throughout this book, there has also been great progress in refining how we handle correctional practice and programming.

There is little doubt that most correctional experiences for clients or inmates are not tinged with violence or brutality. The vast majority of correctional staff in both communities and institutions act professionally, whether the attributes of their work fit that designation or not. Basic health care, clean housing, and nutritious food are provided to most incarcerated persons in the United States. Probation and parole officers do provide referrals to their clients when time permits and programs are available. Despite crowded caseloads, these officers usually make every effort to carefully watch the most dangerous of their charges. Jails, though sometimes overcrowded or, at least, overused, are generally helpful at ensuring the

safety of suicide-prone or mentally disturbed inmates or people detoxing from drug- or alcohol-induced highs. Jails may not represent the best places for such people, but they are usually safer than the streets and do provide a minimum of much needed services. There is much more programming available for those incarcerated in prisons and even jails, and to probationers and parolees, than there was even 10 years ago. In short, though we tend to repeat our past mistakes, there has been some learning from them as well, and this is manifested in improved correctional practice.

## SUMMARY

**LO 15.1** Discuss the mistakes of the past that should inform the future.

- Initiatives that have been tried before, such as the war on drugs, mandatory sentencing, supermax prisons, and abandonment of treatment programs, should help inform the future and aid in making improvements to the correctional experience for all involved.

**LO 15.2** Describe decarceration and what is causing it.

- The current decarceration trend in a number of states, which appears to be catching on in others, is hopeful in that prisons can then be reserved for the truly violent and serious offenders. This can lead to increasing public safety, reducing racial-ethnic minority community disruption, making the system fairer and more just as the punishment fits the crime, increasing the likelihood of successful reentry by offenders, and reducing the monetary costs of corrections for the public.
- A key component of this movement toward greater justice, if there is one, is the progress made in providing worthwhile treatment and programming—what might be termed the penal help movement in corrections. Should correctional managers and policymakers continue to support and increase funding for such initiatives, we may witness a true age of reform in this generation.

**LO 15.3** Discuss the importance of professionalization to the field of corrections.

- Increasing the professionalism in the field of corrections through education, salary, and training will improve retention rates and increase an understanding of the needs to achieve better outcomes for those in the system.

**LO 15.4** Explain the value of relationships in corrections.

- The field of corrections is about people, and connections between people that are positive and supportive will enhance the experience for all.

**LO 15.5** Identify the potential problems with privatization.

- Another currently popular movement, privatization, should give us pause, however. As a number of studies and infamous examples indicate, private prisons tend to have more problems with the humane incarceration of inmates and the level of professionalism of their staff. For these reasons, and given the susceptibility of these institutions (and state legislatures and all political entities) to corruption and profiteering, the privatization of whole institutions should be reconsidered.
- As the political winds shift away from purely punishment-oriented corrections, it will be interesting to see how correctional organizations, programs, and their actors will adjust in terms of privatization, professionalism, and decarceration.

## KEY TERMS

Corrections-industrial  
complex 378

Penal harm 376  
Penal help 376

Privatization 377

## DISCUSSION QUESTIONS

1. Discuss the evidence that indicates our correctional practices do not fit the amount of crime in the United States. Note how we compare with other countries in terms of the use of incarceration.
2. Review the attributes of a professional and why and how the presence of those characteristics would serve to improve correctional operations.
3. What problems do “get tough” policies create for correctional operations? What benefits, if any, do they provide?
4. What is the connection between biology and environment in correctional operations? How do positive and negative environments affect the “biology” of those who work in corrections and those who are clients and inmates within and outside of them?
5. What are the indicators that a penal help perspective may come to guide corrections in the future? What are the indicators that a penal harm perspective is very much alive in present-day corrections?
6. Why do you think that private prisons have more problems with the operation of their facilities in terms of both inmate and staff management? Would you argue that we as a country should continue to authorize the construction and operation of private prisons and privatization in corrections? Why or why not?
7. In your opinion, what current initiatives in corrections offer the most promise for the future? Support this opinion with research and readings provided in this section or in the rest of the text.



# Answers to Test Your Knowledge

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## Chapter 1

1. True. We have seen that we justify punishment in terms of retribution, deterrence, incapacitation, rehabilitation, and reintegration.
2. False. The strongest deterrent against crime is the certainty of punishment.
3. False. While the severity of the crime is the most important consideration, the defendant's prior record and certain other considerations come into play.
4. True. The brain's pleasure centers light up when wrongdoers are punished, indicating that they have received a shot of rewarding dopamine.
5. True. Every legal system in the world assumes this.
6. True. Philosophies of punishment depend on concepts of human nature.
7. False. Specific deterrence rarely works, as recidivism rates aptly demonstrate.
8. True. The United States incarcerates people at a higher rate than any other country in the world.

## Chapter 2

1. True. The wealthy and powerful were often able to escape most punishments, and when that was not possible, they were often able to "buy" their way out of physical punishments.
2. True. The development of sails negated the need for human power to propel ships.
3. False. The concept of the "panopticon," devised by Jeremy Bentham, included a rounded architecture to enhance the ability to see inmates in their cells and therefore to supervise them more effectively (or that was the plan anyway).

4. True.
5. The main difference between the Pennsylvania and New York models for prisons was that in Pennsylvania, inmates were required to be "silent and separate" from other inmates at all times, and in New York, inmates were required to be "silent and congregate" in that they could work together and do other activities together, but they must be silent. The New York model was mostly adopted in the United States because it allowed inmates to work together, and they were able to make more and thus offset the cost of incarceration more than inmates under the Pennsylvania model, who were laboring alone in their cells.
6. False. The Auburn Prison, whose cornerstone was laid in 1816 and which is still in operation today, was part of the New York system of "congregate but silent" prisons. Inmates worked together but were housed separately and were to maintain silence no matter whether together or apart.
7. True. Because inmates could be together for work and sometimes for worship but needed to be "silent," it was difficult to always control them. Therefore, Auburn and Sing Sing staff used the lash frequently, along with solitary confinement and marching in lockstep.
8. False. The 1870 Prison Congress was held because the promise of the early prison reformers had not been realized, and as a consequence attendees of this congress called for another round of reform.
9. True. Correctional institutions are supposed to "correct" and therefore include some programming geared toward achieving that goal.

## Chapter 3

1. False. The only difference is that one is concerned with what is right and wrong in the private sphere (morality), and the other is concerned with what is right and wrong in the public sphere (ethics).



2. Deontological ethical systems are concerned with whether the act itself is good, and teleological ethical systems are focused on the consequences of the act.
3. True.
4. True.
5. True.
6. True. Noble cause corruption is concerned with the end (serving the noble cause) over the means to get there. Correctional organizations tend to employ persons who are moved by the plight of the victims (“the smell of the victim’s blood”) and by the need to act to make the world right (“running to the tower”).
7. False. Official deviance is unethical or illegal acts that are done to benefit the organization or organizational members, not the person committing the act.
8. True. The isolated, secretive nature of much of the work with clients who are powerless, and workers who have a great deal of discretion, makes correctional work more susceptible to ethical violations.

## Chapter 4

1. False. Basic principles of justice mandate that the criminal justice system punish only similarly situated offenders (equals) with the same punishment.
2. False. Other things include prior record, gang affiliation, and treatment considerations.
3. True. Three-strikes laws are laws that allow states to imprison a person who has been convicted of a third felony for life.
4. False. He or she may be sentenced to serve concurrent sentences.
5. False. Victims or survivors can have input into the sentencing decision in all 50 states if they wish in the form of a victim impact statement.
6. False. Judges receive guidance or advice in the form of presentence investigation reports (PSIs) written by probation officers and in the form of sentencing guidelines.
7. False. Most studies find that once legally relevant variables are taken into account, it is rarely found that minorities are subjected to discriminatory sentencing.
8. True. Separate courts do exist for criminals with special problems such as drug addiction.
9. False. Some states do and some states do not.

## Chapter 5

1. False. Most adult jails are operated by counties, although a few states and the federal government administer them as well.
2. True. Most jails for juveniles are referred to as detention centers, and some adult jails are called this, too.
3. False. About 60% of inmates in adult jails have not been convicted of a crime.
4. True. The drug war has netted more women and minority group members because the war has focused on low-level offenders (not the drug kingpins) and because it has focused on impoverished areas of cities that are disproportionately occupied by minorities.
5. True. Jails hold more people with mental illnesses than other social institutions in this country because the mental health hospitals have steadily decreased their populations over the past 40 years, leaving no place else for the police to take people.
6. False. Incarcerated women tend to have more medical problems than incarcerated men.
7. True. Female staff are more likely to be the perpetrators of sexual victimization of male inmates than are male staff. Notably, there are about 10 times more male inmates in jails than there are females, making it more likely that female staff will supervise male inmates than that male staff will supervise female inmates.

## Chapter 6

1. True. Probation did start during the 1800s and was run by volunteers.
2. False. Most members of the public consider it “soft on crime.”
3. False. Parole occurs after a period in prison; probation is in lieu of prison.
4. True. As many as 90% of cases are granted probation.
5. True. Law enforcement-type officers achieve better results than social work-type officers, but both do less well than “hybrid” officers.
6. True. Work release programs perform both functions.
7. False. Most hardened criminals would rather have prison than almost any form of community supervision other than straight probation.
8. False. Boot camps have proven ineffective in rehabilitating criminals of any age.

## Chapter 7

1. True. Despite some real reductions in incarceration at the state and local levels over the past few years, the United States still has the highest incarceration rate in the world.
2. False. Although large by comparison with minimum-security prisons, about three-fifths of all inmates are held in medium- and minimum-security prisons, with medium-security prisons holding more inmates overall than maximum- and minimum-security prisons.
3. In medium-security prisons, the exterior security can be as tight as it is for the supermax and maximum-security prisons, but internally the inmate has many more opportunities to attend school, treatment, and church programming and to work in any number of capacities. There is also greater diversity in rooming options, from dormitories to single cells, with the more preferred single or double cells used as a carrot to entice better behavior. Visiting and contact with the outside world are less restricted. Some medium-security inmates may even be allowed to leave the institution for work-related deliveries or on furloughs, although this is much more common in minimum-security prisons.
4. Importation occurs when inmates entering a prison *import* aspects of their own culture from the outside. Prisonization occurs when inmates adopt the inmate subculture of the institution.
5. Gangs are groups of people with similar interests who socialize together and who may engage in deviant or criminal activities; they are a common phenomenon in jails and prisons. They may serve to reinforce the prison subculture by providing for the needs of inmates and thereby reducing their deprivations and pains. Prison gang members are thought to be more likely to engage in crime and violence while incarcerated.
6. There is violence in prisons because incarcerated people are there unwillingly; people are forced to do things they normally would not do with people they might not like; and, most important, some of them are inclined to be violent.
7. True. Transgender inmates, particularly in men's prisons, are more likely to be sexually assaulted than any other group of inmates.

## Chapter 8

1. True. Calling a correctional officer a "guard" can be perceived as demeaning the role and thus as an insult.

2. The five characteristics of a profession are (1) prior educational attainment involving college, (2) formal training on the job or just prior to the start of the job, (3) pay and benefits that are commensurate with the work, (4) the ability to exercise discretion, and (5) work that is guided by a code of ethics.
3. Generally speaking, police jobs pay the most, then probation/parole officer jobs, and then correctional officer jobs.
4. Generally speaking, probation and parole officer jobs often require a bachelor's degree, policing jobs usually require some college if not an associate's or bachelor's degree, and correctional officer jobs rarely require a bachelor's degree or even some college.
5. False. Most depictions of corrections on television and in the movies show a distorted view of what corrections is and what correctional staff in institutions and communities do.
6. True.
7. Stress for correctional staff comes from many sources: shift and evening work that interferes with sleep and family relationships; a working environment with people who are experiencing a negative time in their lives; lack of power, control, and voice in their work; low pay and training; a hack rather than a human service role; and competitive and non-supportive coworkers.
8. True.

## Chapter 9

1. True. Parole began in an Australian penal colony during the 1830s.
2. False. Parole is an executive branch function.
3. False. Many parolees are released on mandatory parole.
4. True. At least two-thirds reoffend within 3 years.
5. True. The parolees most likely to recidivate are property offenders.
6. True or false. There is broad disagreement on this.
7. False. Parole success is determined differently in different states.
8. True and false. Sanctions such as halfway houses and electronic monitoring (EM) cut costs only if they are used appropriately, and they increase parolee surveillance only relative to ordinary parole—not relative to prison.

## Chapter 10

1. True.
2. False. In the early prisons, women were an afterthought because these prisons were not built for them. Therefore, they were often placed in attics or out-of-the-way places. They were not separated like the men because there wasn't enough room to do so. They tended to be preyed on by male staff and inmates before they were guarded by female matrons.
3. True. Race shaped the incarceration of men and women in southern and northeastern prisons before and after the Civil War because it determined where, how, and whether certain racial groups were incarcerated.
4. True.
5. False.
6. True. Women offenders are sometimes treated as double deviants because they are criminal deviants (because it is thought that most people don't commit crimes [there is some debate about this]) and because they are gender deviants (in that they do not conform to traditional gender expectations).
7. True. Feminists have advocated for equal treatment and gender-specific programming in corrections.
8. True.
9. False.

## Chapter 11

1. True.
2. True.
3. Nine teenage Black boys riding a train in 1931 were accused of raping two white girls. They were tried several times, and most were found guilty by all-white juries of rape, sometimes without the assistance of counsel, and their convictions kept getting overturned. At least one of the white girls recanted and said the rapes were a fabrication. Four of the youths did prison time. This case was emblematic of how African Americans were handled by the criminal justice system during the first half of the 20th century because it demonstrates how racism permeated every part of the system from police, to prosecutor, to judge, to jury, to corrections.

4. As Bill Quigley indicates, facts indicating that racism still exists in the criminal justice system include how the war on drugs has been prosecuted, driving while Black or Brown (DWB), more arrests of minority group members for drug offenses, longer waits for trial while incarcerated for accused minority group members, underfunded defense attorneys who serve disproportionately minority group members, minority group member exclusion from jury service, the fact that trials are rare, longer sentences for minority group members, disproportionately more of the longest sentences for minority group members, and disproportionate incarceration of minority group adults and youths.
5. False. Some estimates put the number at 20,000.
6. False. Chinese and Japanese immigration was opposed in law and in practice, particularly after the railroads were built.
7. In 1942, Japanese Americans were interned in reaction to the bombing of Pearl Harbor and the fear that they might conspire to help the Japanese government win the war. German Americans were not interned, although Germany had started the war and German Americans were widely dispersed across several states. One explanation for the differential treatment is racial discrimination.
8. One basic connection among class, race/ethnicity, and crime is that most people who commit street crimes are poor, and a disproportionate number of minority group members are poor.
9. True.
10. True.
11. False.

## Chapter 12

1. True. Juveniles do commit a disproportionate number of criminal acts.
2. True. Juvenile antisocial behavior is normal in that most adolescents engage in it.
3. False. Special juvenile courts began in Cook County, Illinois.
4. True. This is the principle of *parens patriae*.

5. True. Juveniles can be tried in adult courts and sent to adult prisons.
6. False. Only relatively recently have they been afforded nearly all the same rights as adults.
7. False. The Supreme Court has ruled that juveniles cannot be sentenced to life without parole (LWOP) for any crime other than homicide.
8. False. It was permissible in the United States to execute those who committed murder while they were juveniles until 2005.

## Chapter 13

1. True.
2. False. The vast majority of lawsuits filed by inmates are frivolous.
3. True. Their prison cells are not “homes.”
4. True.
5. True. Most Americans support the death penalty.
6. True. A white murderer is proportionately more likely than a Black or Hispanic murderer to be sentenced to death and to be executed.
7. False. The death penalty is far more expensive than life in prison.
8. True. It is permissible to execute a person with a history of mental illness, but not one with a mental disability (IQ of 70 or below).

## Chapter 14

1. False. The more criminals we can rehabilitate, the more society is protected.

2. False. The biggest budget outlay in corrections after salaries is for control and surveillance.
3. False. Many well-run programs expect to reduce recidivism by 10% to 20%.
4. False. Actuarial data supply a better understanding of what does and does not work.
5. False. Correctional officials have been reluctant to use pharmaceutical treatment for addicts.
6. True. Sex offenders are less likely to reoffend than all offense categories other than murder.
7. True. In all major cities studied, well over 50% of arrestees test positive for some kind of illegal drug.
8. True. There are more individuals with mental illnesses in jails and prisons than in mental hospitals in the United States.

## Chapter 15

1. Answers will vary.
2. True, at least in part, but there are other reasons why correctional populations have been incrementally decreasing.
3. False. Privatization of corrections leads to less professionalism of staff because staff are paid less and trained less, so educated people are not attracted to the work and it is harder to keep good people who behave ethically.
4. False. Privatization of corrections does not lead to more safety and security for inmates, staff, and communities because the staff are less likely to be professional.
5. False.
6. True, and it rarely is considered by governmental or private agencies that operate corrections or by the general public.





# Glossary

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**Abu Ghraib:** A military prison in Iraq where untrained “correctional officers” subjected prisoners to torture.

**Actuarial data:** Data relating to what has actually occurred and been recorded over many thousands of cases. Evidence-based treatment modalities are based on actuarial data.

**Addiction:** A psychobiological illness characterized by intense craving for a particular substance.

**Age-crime curve:** Formed from the statistical count of the number of known crimes committed in a population over a given period mapped according to age.

**Amicus curiae briefs:** “Friend of the court” briefs presented to the court, arguing in support of one side or the other, by interested parties not directly involved with the case.

**Anger management programs:** Programs that consist of a number of techniques by which someone with problems in controlling anger can learn the causes and consequences of anger to reduce the degree of anger and avoid anger-inducing triggers.

**Attica Prison riot:** The bloodiest prison riot in American history began with a spontaneous act of violence by one inmate against an officer who had tried to break up a fight. Violence quickly spread because inmates were frustrated and angry about the overcrowded conditions, lack of programming, and other conditions of confinement. Charges of racism were made by the mostly African American inmates regarding their treatment by the mostly White staff. Negotiations broke down, resulting in the prison’s being stormed by the state police and by correctional staff. Ten hostages and 29 inmates were dead or dying when the prison was secured. Another 80 inmates had gunshot wounds.

**Balanced approach:** A three-pronged goal of the juvenile justice system: (a) to protect the community, (b) to hold delinquent youths accountable, and (c) to provide treatment and positive role models.

**Big House prisons:** Fortress stone or concrete prisons, usually maximum security, whose attributes include isolation, routine, and monotony. Strict security and rule enforcement, at least formally, and a regimented schedule are other hallmarks of such facilities.

**Bill of Rights:** The first 10 amendments to the U.S. Constitution.

**Bridewells:** Workhouses constructed to hold and whip or otherwise punish “beggars, prostitutes, and nightwalkers” and later to serve as places of detention.

**Brutalizing effect:** The assumption that executions, rather than deterring homicides, actually increase homicides following the executions.

**Chemical castration:** A biomedical treatment for chronic sex offenders in which a synthetic hormone called Depo-Provera is administered. Depo-Provera works in men to reduce sexual thoughts, fantasies, and erections by drastically reducing the production of testosterone, the major male sex hormone.

**Civil death statutes:** Statutes in former times mandating that convicted felons lose all citizenship rights.

**Civil rights claim:** A “Section 1983” claim that a person has been deprived of some legally granted right.

**Classical School:** School of penology/criminology that was a nonempirical mode of inquiry similar to the philosophy practiced by the classical Greek philosophers—that is, “armchair philosophy.”

**Coequal staffing:** Programs that provide comparable pay and benefits for those who work in the jail with that of people who work on the streets as law enforcement in sheriffs’ departments.

**Cognitive-behavioral therapy (CBT):** A counseling approach that tries to address dysfunctional cognitions, emotions, and behaviors in a relatively short time through goal-oriented, systematic procedures using a mixture of operant psychology, cognitive theory, and social modeling theory.

**Community corrections:** A branch of corrections defined as any activity performed by agents of the state to assist offenders in reestablishing functional law-abiding roles in the community while at the same time monitoring their behavior for criminal activity.

**Community jails:** Organized so those inmates engaged in educational programs, drug or alcohol counseling, or mental health programming in the community will seamlessly receive such services while incarcerated and again as they transition out of the facility.

**Community residential centers:** Places where offenders (usually parolees) reside when correctional authorities deem them not yet ready to live completely freely.

**Community service order:** Part of a disposition requiring probationers to work a certain number of hours doing tasks to help their communities.

**Concurrent sentence:** A sentence in which two separate sentences may be served at the same time.

**Consecutive sentence:** A sentence in which two or more sentences must be served sequentially.

**Contract and lease systems:** Systems devised by prisons to hire out inmates' labor to farmers or other contractors.

**Contrast effect:** The effect of punishment on future behavior depending on how much the punishment and the usual life experience of the person being punished differ or contrast.

**Convict code:** Informal rules inmates live by vis-à-vis the institution and staff.

**Correctional boot camps:** Facilities modeled after military boot camps where young and nonviolent offenders are subjected to military-style discipline and physical and educational programs.

**Correctional institutions:** Institutions (prisons) that carefully classify inmates into treatment programs that address their needs and perceived deficiencies. They are also intended to be places where inmates can earn "good time" and eventual parole. Correctional institutions use the medical model to treat inmates, who are believed to be "sick" and in need of a treatment regimen, provided by the prison, that will address that sickness and hopefully "cure" the inmates so they might become productive members of society. (This term originally applied only to prisons but now can refer to jails as well.)

**Corrections:** Functions carried out by government and private agencies having to do with the punishment, treatment, supervision, and management of individuals who have been accused or convicted of criminal offenses.

**Corrections-industrial complex:** Collusion among politicians, business, and criminal justice officials to make money for themselves and their organizations from correctional services, construction, and operations.

**Crime control model:** A model of law that emphasizes community protection from criminals and stresses that civil liberties can have real meaning only in a safe, well-ordered society.

**Death Penalty Information Center:** Major (partisan) source of information on the death penalty in the United States.

**Deference period:** The period of time when there was a partial return to the hands-off approach. It refers to the courts' willingness to defer to the expertise and needs of the authorities.

**Deferred adjudication:** A decision made by certain criminal justice personnel to delay or defer formal court proceedings if a youth follows probation conditions.

**Deinstitutionalization of people with mental illnesses:** Happened in the United States as a result of the civil rights movement and the related effort to increase the rights of people involuntarily committed to mental hospitals. It was also helped along by the development of pharmaceuticals that purportedly addressed the symptoms of some illnesses and by decreased federal funding for state hospitals devoted to people with mental illnesses.

**Delinquents:** Juveniles who commit acts that are criminal when committed by adults.

**Deontological ethical systems:** Systems concerned with whether an act itself is good.

**Determinate sentence:** A prison sentence of a fixed number of years that must be served rather than a range.

**Deterrence:** A philosophy of punishment aimed at the prevention of crime by the threat of punishment.

**Discretion:** The ability to make choices and to act or not act on them.

**Discretionary parole:** Parole granted at the discretion of a parole board for selected inmates who have earned it.

**Discrimination:** Occurs when people or groups are treated differently because of who they are (e.g., on the basis of race, ethnicity, gender, age, disability, religion, nationality, sexual orientation or identity, or income) rather than their abilities or something they did.

**Disparity:** Occurs when one group is treated differently and unfairly by governmental actors, compared with other groups.

**Double deviants:** Women and girls who are deviant because they engage in crime and because they have violated societal gender role expectations.

**Driving while Black or Brown (DWB):** Refers to the practice of police focusing law enforcement attention on Black or Brown drivers.

**Drug court:** A special sentence for drug-related nonviolent offenders who must then complete an extensive drug treatment program.

**Due process model:** A model of law that stresses the accused's rights more than the rights of the community.

**Egoism:** Needs of the self are most important; acting to satisfy one's own wants and needs is acting ethically.

**Eighth Amendment:** Constitutional amendment that forbids cruel and unusual punishment.

**Electronic monitoring (EM):** A system by which an offender under house arrest can be monitored for compliance using computerized technology such as an electronic device worn around the offender's ankle.

**Elmira Reformatory:** Founded in 1876 in New York as a model prison in response to calls for the reform of prisons from an earlier era, it aimed to encompass all of the rehabilitation focus and graduated reward system that reformers were agitating for.

**Enlightenment:** Period in history when a major shift in the way people began to view the world and their place in it occurred, moving from a supernaturalistic worldview to a naturalistic and rational worldview.

**Ethical formalism:** Determines morality on the basis of a universal law that includes clear rights and wrongs.

**Ethics:** The concepts and beliefs about, and study of, right and wrong professional conduct.

**Ethics of care:** A framework centered on good acts in which care of and concern for others are paramount.

**Ethics of virtue:** A framework that emphasizes the virtue of one's character over actions.

**Ethnicity:** Refers to groups of people with a shared culture. An ethnic group often has a distinct language as well as particular values, religion, history, and traditions. Ethnic groups may be made up of several races and have diverse national heritages.

**Evidence-based practices (EBP):** Movement in which in order to reduce recidivism, corrections must implement practices that have consistently been shown to be effective.

**Fair Sentencing Act of 2010:** An act mandating that the amount of crack cocaine subject to the 5-year minimum sentence be increased from 5 to 28 grams, thereby reducing the 100-to-1 ratio to an 18-to-1 ratio (28 grams of crack gets as much time as 500 grams of powder cocaine).

**First Amendment:** Guarantees freedom of religion, speech, press, and assembly.

**First Step Act:** An act signed by President Trump that seeks to improve criminal justice outcomes such as reducing the federal prison population (the act applies only to the federal system) and creating rehabilitative mechanisms to maintain public safety.

**Fourteenth Amendment:** Contains the due process clause, which declares that no state shall deprive any person of life, liberty, or property without due process of law.

**Fourth Amendment:** Guarantees the right to be free from unreasonable searches and seizures.

**Galley slavery:** A sentence forcing the convict to work as a rower on a ship.

**Gangs:** Groups of people with similar interests who socialize together and support one another but who also engage in deviant or criminal activities. Gangs have a hierarchical organizational structure and a set and often strict code of conduct for members.

**Gender identity:** The gender one identifies with, which can differ from one's assigned sex at birth.

**General deterrence:** The presumed preventive effect of the threat of punishment on the general population.

**Global Positioning System (GPS) monitoring:** A system of probation and parole supervision whereby probationers and parolees are required to wear tracking units that can be monitored by satellites.

**Great Law:** William Penn's idea, based on Quaker principles, deemphasized the use of corporal and capital punishment for all crimes but the most serious.

**Habeas corpus:** Latin term meaning "you have the body." It is a court order requiring that an arrested person be brought before it to determine the legality of detention.

**Habitual offender statutes:** Statutes mandating that offenders with third felony convictions be sentenced to life imprisonment regardless of the nature of the third felony.

**Hack:** A correctional officer in a prison who is a violent, cynical, and alienated keeper of inmates.

**Halfway houses:** Transitional places of residence for correctional clients who are "halfway" between the constant supervision of prison and the much looser supervision in the community.

**Hands-off doctrine:** An early American court-articulated belief that the judiciary should not interfere with the management and administration of prisons.

**Hedonism:** A doctrine maintaining that all goals in life are means to the end of achieving pleasure and/or avoiding pain.

**Hedonistic calculus:** A method by which individuals are assumed to logically weigh the anticipated benefits of a given course of action against its possible costs.

**Hostile environment:** Occurs when the workplace is sexualized with jokes, with pictures, or in other ways that are offensive to one gender.

**House arrest:** Program that requires offenders to remain in their homes except for approved periods to travel to work, school, or other approved destinations.

**Houses of refuge:** Part of the Jacksonian movement (named after President Andrew Jackson) of the early 1800s to use institutions as the solution for social problems. Their stated purpose was to remove impressionable youth, mainly boys but also girls, from the contamination that association with more hardened adult prisoners might bring.

**Human agency:** The capacity of humans to make choices and their responsibility to make moral ones regardless of internal or external constraints on their ability to do so.

**Human service:** The provision by a correctional officer of goods, services, advocacy, and assistance to help inmates adjust.

**Importation:** Occurs when inmates bring aspects of the larger culture into the prison.

**Incapacitation:** A philosophy of punishment that refers to the inability of criminals to victimize people outside prison walls while they are locked up.

**Indeterminate sentence:** A prison sentence consisting of a range of years to be determined by the convict's behavior rather than one of a fixed number of years.

**Intensive supervision probation (ISP):** Probation that involves more frequent surveillance of probationers and that is typically limited to more serious offenders in the belief that there is a fighting chance that they may be rehabilitated (or to save the costs of incarceration).

**Intermediate sanctions:** A number of innovative alternative sentences that may be imposed in place of the traditional prison/probation dichotomy.

**Irish system:** A prison system used during the 19th century. This system involved four stages, beginning with a 9-month period of solitary confinement, the first 3 months with reduced rations and no work.

**Jails:** Local community institutions that hold people who are presumed innocent before trial, convicted people before they

are sentenced, convicted minor offenders who are sentenced for terms that are usually less than a year, juveniles (usually in their own detention centers, separated from adults in adult jails, or before transport to juvenile facilities), women (usually separated from men and sometimes in their own jails), and people for the state or federal authorities; they serve to incapacitate, deter, rehabilitate, punish, and reintegrate (depending on the particular jail population being served and the capacity of the given facility).

**Jim Crow laws:** Laws devised by southern states following the Civil War, starting in the 1870s and lasting until 1965 and the civil rights movement, to prevent African Americans from fully participating in social, economic, and civic life. These laws restricted the rights and liberties of Black citizens in employment, housing, education, travel, and voting. Voter disenfranchisement, or preventing African Americans from voting, was a key part of the Jim Crow laws.

**Judicial reprieve:** British and early American practice of delaying sentencing following a conviction that could become permanent, depending on the offender's behavior.

**Judicial waiver:** Involves a juvenile judge's deciding after a "full inquiry" that the juvenile should be waived to the adult system.

**Justice:** A moral concept of just or fair treatment consisting of "treating equals equally and unequals unequally according to relevant differences."

**Liberal feminists:** People who believe that the problem for girls and women involved in crime lies more with the social structure around them (e.g., poverty and lack of sufficient schooling or training, along with patriarchal beliefs) and that the solution lies in preparing them for an alternative existence so that they do not turn to crime.

**Liberty interest:** An interest in freedom from governmental deprivation of liberty without due process.

**Life without parole (LWOP):** A life sentence with the additional condition that the person never be allowed parole.

**Mandatory parole:** Automatic parole after a set period of time for nearly all inmates.

**Mandatory sentence:** A prison sentence imposed for crimes for which probation is not an option, where the minimum time to be served is set by law.

**Marks system:** A graduated reward system for prisons in which, if one behaves, it is possible to earn "marks" that, in turn, entitle one to privileges.

**Mature coping:** Occurs in prisons when the inmate deals "with life's problems like a responsive and responsible human being, one who seeks autonomy without violating the rights of others, security without resort to deception or violence, and relatedness to others as the finest and fullest expression of human identity" (Johnson, 2002, p. 83).

**Maximum-security prisons:** These facilities have high external and internal security. Maximum-security prisons may have the same exterior security controls as supermaxes, but they inside inmates are not locked down as much, though the treatment

and work programming are much more constricted than in medium-security prisons.

**Medical model:** Rehabilitation model that assumes criminals are sick and need treatment.

**Medium-security prisons:** Hold a mix of people in terms of crime categories but who program well. They offer high external security, but inmates are able to move around more freely within the "walls." Some are built like a college campus, with several buildings devoted to distinct purposes.

**Minimum-security prisons:** Created for lower level felony offenders and those who are "short timers," or people who are relatively close to a release date. Inmates are not expected to pose escape or behavioral problems. Ability and willingness to work are often prerequisites for classification to this type of facility.

**Mortification:** Process that occurs as inmates enter a prison and suffer from the loss of the many roles they occupied in the wider world (Goffman, 1961; Sykes, 1958). Only the role of inmate is available—a role that is formally powerless and dependent.

**Mount Pleasant Prison:** First prison constructed for women in the United States. Built in 1839 close to the Sing Sing (New York) prison for men, it was in part administered by Sing Sing but had its own buildings, staff, and administrator.

**National Probation Act of 1925:** The act that initiated the legal use of probation in the United States.

**Natural law:** Adherents of this framework believe that what is good is what is known to be so.

**Needs principle:** A principle that refers to an offender's prosocial needs, the lack of which puts them at risk for reoffending, and that suggests these needs should receive attention in program targeting.

**Newgate Prison (Simsbury, Connecticut):** An early colonial prison (1773–1827) that started as a copper mine. Many of its inmates would work the mine during the day and sleep in it at night. During the Revolutionary War, some Loyalists to the English Crown were held here.

**New-generation, or podular, direct supervision jails:** Jails that have two key components: a rounded, or podular, architecture for living units and the direct supervision of inmates by staff.

**New Mexico State Penitentiary riot:** A riot took place over the conditions of confinement and crowding, which were at very high levels. Repeated warnings were given that a riot would occur, but administration and staff failed to adequately prepare, resulting in the state's eventually retaking the prison. Thirty-three inmates were killed by other inmates over 3 days. Numerous inmates, along with staff hostages, were beaten or raped. Millions of dollars in damage was done (Useem, 1985; Useem & Kimball, 1989).

**New York prison system:** Prisons included congregate work and eating arrangements but silent and separate housing.

**Noble cause:** A profound moral commitment to make the world a safer place to live.



**Norfolk Island:** An English penal colony, 1,000 miles off the Australian coast, regarded as a brutal and violent island prison where inmates were poorly fed, clothed, and housed and were mistreated by staff and their fellow inmates.

**Offender needs:** Deficiencies in offenders' lives that hinder their making a commitment to a prosocial pattern of behavior.

**Offender risk:** The probability that a given offender will reoffend and thus the threat that they pose to the community.

**Official deviance:** When officials act in a way that benefits their organization but violates laws or formal rules.

**Overcrowding:** A phenomenon that occurs when the number of inmates exceeds the physical capacity (the beds and space) available.

**Pains of imprisonment:** Perils described by Sykes (1958) as the "deprivation of liberty, the deprivation of goods and services, the deprivation of heterosexual relationships, the deprivation of autonomy, and the deprivation of security" (pp. 63–83).

**Panopticon:** A prison design in which multitiered cells are built around a hub so that correctional staff can view all inmates without being observed.

**Parens patriae:** A legal principle giving the state the right to intercede and act in the best interest of a child or any other legally incapacitated person, such as a mentally disabled individual who is deemed unable to make reasonable decisions.

**Parole:** The release of prisoners from prison before completing their full sentences.

**Parole board:** A panel of people presumably qualified to make judgments about the suitability of a prisoner to be released from prison after having served some specified time of their sentence.

**Patriarchy:** Involves attitudes, beliefs, and behaviors that value men and boys over women and girls (Daly & Chesney-Lind, 1988). Members of patriarchal societies hold the belief that men and boys are worth more than women and girls and also believe that women and girls, as well as men and boys, should have certain restricted roles to play and that those of the former are less important than those of the latter. Education and work training that help one make a living and better pay are more important to secure for men and boys than for women and girls, who are best suited for more feminine and—by definition, in a patriarchal society—less worthy professions.

**Penal harm:** Movement in corrections based on retribution in sentencing and the infliction of greater harm while inmates are under correctional supervision.

**Penal help:** Movement including the reform of state laws to liberalize marijuana use, the repeal of harsh sentences, and the reduction in the use of incarceration coupled with the increase in the use of rehabilitation, restorative justice, and reentry programming. Altogether there has been a societal shift away from penal harm as a guiding principle of corrections.

**Pennsylvania prison system:** Prisons that emphasized silence and isolated inmates in their cells, restricting their contact with others. They reinforced the need for penitence.

**Penology:** Study of the processes and institutions involved in the punishment and prevention of crime.

**Positivists:** Those who believe that human actions have causes and that these causes are to be found in the thoughts and experiences that typically precede those actions.

**Power:** The ability to "get people to do what they otherwise wouldn't" (Dahl, 1961).

**Predisposition report:** A report done in juvenile courts that is analogous to a presentence investigation report in adult courts.

**Presentence investigation report:** Report written by the probation officer informing the judge of various aspects of the offense for which the defendant is being sentenced as well as providing information about the defendant's background (educational, family, and employment history), character, and criminal history.

**Principle of utility:** The supposition that human action should be judged moral or immoral by its effects on the happiness of the community and that the proper function of the legislature is to make laws aimed at maximizing the pleasure and minimizing the pain of the population—"the greatest happiness for the greatest number."

**Prisonization:** Adoption of the inmate subculture by inmates.

**Prison Rape Elimination Act of 2003 (PREA):** Act that mandated that the Bureau of Justice Statistics collect data on sexual assaults in adult and juvenile jails and prisons and that it identify facilities with high levels of victimization.

**Prisons:** Correctional facilities that have a philosophy of penitence (hence *penitentiary*) and that were created as a grand reform, as they represented, in theory at least, a major improvement over the brutality of punishment that characterized early Western, English, and American law and practice.

**Prison subculture:** Norms, values, beliefs, traditions, and even language that are distinctive to prisons.

**Privatization:** Occurs when services or whole correctional institutions are provided or operated by private businesses or corporations.

**Probation:** A sentence imposed on convicted offenders that allows them to remain in the community under the supervision of a probation officer instead of being sent to prison.

**Problem-solving courts:** Alternatives to traditional criminal courts that cannot adequately address the problems of offenders with special needs and other issues such as alcoholism and mental health problems.

**Profession:** Regarding the positions of corrections officers and staff, distinguished by prior educational attainment involving college, formal training on the job or just prior to the start of the job, pay and benefits that are commensurate with the work, the ability to exercise discretion, and work that is guided by a code of ethics.

**Professionalization:** Includes the enforcement of professional standards for their new hires, such as a required college-level educational background, pay that is commensurate with job



requirements, training that sufficiently prepares people for the job, and a code of ethics that drives the work practice.

**Prosecutorial discretion:** Allows prosecutors to file some cases in either adult or juvenile court.

**Punishment:** The act of imposing some unwanted burden, such as a fine, probation, imprisonment, or death, on convicted persons in response to their crimes.

**Quid pro quo sexual harassment:** Involves something for something, as in you give your boss sexual favors and the boss allows you to keep your job.

**Race:** The classification of humans into populations or groups based on various factors such as culture, language, social practice, or heritable characteristics.

**Rationality:** The state of having good sense and sound judgment on the basis of the evidence before us.

**Recidivism:** When an ex-offender commits further crimes.

**Reentry:** The process of integrating offenders back into the community after release from jail or prison.

**Rehabilitation:** A philosophy of punishment aimed at “curing” criminals of their antisocial behavior.

**Reintegration:** A philosophy of punishment that aims to use the time criminals are under correctional supervision to prepare them to reenter the free community as well equipped to do so as possible.

**Religious perspective:** A perspective that weighs what is right or wrong on the basis of one’s religion.

**Residential substance abuse treatment (RSAT):** A community that typically lasts 6 to 12 months and is composed of inmates in need of substance abuse treatment and whose parole dates are set to coincide with the end of the program. RSAT inmates are separated from the negativity and violence of the rest of the prison and are provided with extensive cognitive-behavioral counseling and attend Alcoholics Anonymous and Narcotics Anonymous meetings as well as many other kinds of rehabilitative classes.

**Responsivity principle:** A principle maintaining that if offenders are to respond to treatment in meaningful and lasting ways, counselors must be aware of their different developmental stages and learning styles and offenders need to be treated with respect and dignity.

**Restitutive justice:** A philosophy of punishment driven by simple deterrence and a need to repair the wrongs done.

**Restorative justice:** A system of justice that gives approximately equal weight to community protection, offender accountability, and the offender.

**Retribution:** A philosophy of punishment demanding that criminals’ punishments match the degree of harm the criminals have inflicted on their victims—that is, what they justly deserve.

**Retributive justice:** A philosophy of punishment driven by a passion for revenge.

**Risk, needs, and responsivity (RNR) model:** A treatment correctional model that maintains that offenders and the

community are better served if offenders’ risks for reoffending and their needs (their deficiencies, such as lack of job skills) are addressed in a way that matches their developmental stage.

**Risk principle:** A principle that refers to offenders’ probability of reoffending and maintains that those with the highest risk should be targeted for the most intense treatment.

**Role:** What a person does on the job every day.

**Rule of law:** The principle that laws, not people, govern and that no one is above the law.

**Section 1983 suits:** A mechanism for state prison inmates to sue state officials in federal court regarding their confinement and their conditions of confinement.

**Selective incapacitation:** A punishment strategy that reserves prison largely for a distinct group of offenders composed primarily of violent repeat offenders.

**Sentence:** A punitive penalty ordered by the court after a defendant has been convicted of a crime either by a jury, by a judge, or in a plea bargain.

**Sentencing disparity:** Wide variation in sentences received by different offenders that may be legitimate or discriminatory.

**Sentencing guidelines:** Scales for numerically computing sentences that offenders should receive on the basis of the crimes they committed and on their criminal records.

**Shock probation:** A type of sentence aimed at shocking offenders into going straight by exposing them to the reality of prison life for a short period followed by probation.

**Specific deterrence:** The supposed effect of punishment on the future behavior of persons who experience the punishment.

**Split sentences:** Sentences that require convicted persons to serve brief periods of confinement in a county jail prior to probation placement.

**Stanford prison experiment:** A 1971 experiment conducted at Stanford University in which volunteer students were divided into officers and inmates in a makeshift prison. The experiment ended with about one third of the “officers” engaged in the abuse of “inmates,” and other officers stood by while it was going on. The experiment was stopped after a few days and is often referenced as an example of how correctional work and the subcultures that develop as part of the job can foster corrupt behavior by officers.

**Stateville Prison:** Built in Illinois as a panopticon in 1925 in reaction to the deplorable conditions of the old Joliet, Illinois, prison, built in 1860.

**Status offenders:** Juveniles who commit certain actions that are legal for adults but not for children, such as smoking and not obeying parents.

**Status offenses:** Offenses that apply only to juveniles, such as smoking and disobeying parents.

**Statutory exclusion:** Waivers in cases in which state legislatures have statutorily excluded certain serious offenses

from the juvenile courts for juveniles older than a certain age, which varies from state to state.

**Street-level bureaucrat:** The position of public-sector workers in entry-level positions in the criminal justice system who often have too much work, too few resources, and some discretion on how to do their work.

**Subculture:** A subset of a larger culture, with its own norms, values, beliefs, traditions, and history.

**Supermax prisons:** High-security prisons, both internally and externally, that hold those who are violent or disruptive in other prisons in the state or federal system. Inmates are confined to their windowless cells 24 hours a day, except for showers three times a week (during which they are restrained) and solitary exercise time a couple of times a week. Prisoners eat in their cells, and visiting and programming are very limited.

**Teleological ethical systems:** Systems focused on whether the consequences of an act are good.

**Therapeutic communities (TCs):** Residential communities providing dynamic “mutual self-help” environments and offering long-term opportunities for attitude and behavioral change and the learning of constructive, prosocial ways of coping with life.

**Total institution:** “A place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life” (Goffman, 1961, p. 6).

**Transportation:** A sentence exiling convicts and transporting them to a penal colony.

**Truth-in-sentencing laws:** Laws that require that there be a truthful, realistic connection between the sentences imposed on offenders and the time they actually serve.

**Unconditional release:** A type of release from prison for inmates who have completed their entire sentences. They are released unconditionally—with no parole.

**U.S. Sentencing Commission:** A commission charged with creating mandatory sentencing guidelines to control judicial discretion.

**Utilitarianism:** Determines morality on the basis of how many people were helped by an act.

**Victim impact statement:** A statement made by persons directly affected by a crime (or victims’ survivors in the case of murder) to inform the court of the personal and emotional harm they have suffered as a result of the defendant’s actions and, in some states, to make a sentencing recommendation.

**Victim–offender reconciliation programs (VORPs):** Programs designed to bring offenders and their victims together in an attempt to reconcile the wrongs offenders have caused.

**Waiver:** Refers to a process by which a juvenile offender is “waived” (transferred) to an adult court because they have committed a particularly serious crime or is habitually delinquent.

**Walnut Street Jail:** Originally constructed in 1773 in Philadelphia, Pennsylvania, and remodeled in 1790 into the first full-fledged prison. The fee system was dropped; inmates were adequately clothed and fed, regardless of their ability to pay; and they were separated by gender and offense. However, because of problems in implementation, by 1816, the prison was reportedly operating no better than before the reform and remodel.

**Warehouse prisons:** Large prisons, of any security level, where inmates’ lives and movement are severely restricted and rule bound. There is no pretense of rehabilitation; punishment, incapacitation, and deterrence are the only justifications.

**Work release programs:** Programs designed to control offenders in a secure environment while at the same time allowing them to maintain employment.



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